

No. 10445

United States
Circuit Court of Appeals
For the Ninth Circuit.

BENJAMIN ROSE and LOUIS VITAGLIANO,
Appellants,
vs.
UNITED STATES OF AMERICA,
Appellee.


Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

JUN 2 1964

PAUL P. O'BRIEN,
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

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608 S. Hill St.

Los Angeles 14, Calif.

For Appellee:

CHARLES H. CARR,

United States Attorney

ERNEST A. TOLIN,

Assistant United States Attorney

600 U. S. Post Office & Court House Bldg.

Los Angeles 12, Calif. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 8th day of February in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Leon R. Yankwich, District Judge.

[Title of Cause.]

No. 15,811—Crim.

This cause coming on for arraignment and plea of the defendants herein: R. F. Duni, Esq., Assistant U. S. Attorney, appearing for the Government; James Marquardt, Court Reporter, being present and reporting the proceedings; defendants Mac R. Brown, Phil Taplin, Louis Vitagliano, and Sam Weinstein, being present in Court with their attorney, Benjamin Weinstein; defendant Joseph Lieb being present in Court with his attorney, Robert F. Shippee; defendant Benjamin Rose being present in Court with his attorney, Benjamin Goodman; defendant Phil Rezniche being present in Court without counsel, waives an attorney; said defendants herein all state their true names to be as charged in the Indictment, and waive the reading of the Indictment.

It is ordered that this cause be, and is hereby is, continued to February 22, 1943, for plea of said

defendants, demurrer to be filed by February 15, 1943.

31/972 [10]

In the United States District Court, Southern District of California, Central Division

No. 15811

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MAC R. BROWN, JOSEPH LIEB, BENJAMIN ROSE, PHIL REZNICHE, PHIL TAPLIN, LOUIS VITAGLIANO and SAM WEINSTEIN,

Defendants.

DEMURRER TO INDICTMENTS

The defendant, Benjamin Rose, for himself alone, and for no other defendants, demurs to the Indictment herein, upon the following grounds:

I.

That the Indictment charges conspiracy to "unlawfully, willfully, corruptly and feloniously engage in a conspiracy to commit offenses against the United States, that is to say, to sell, trade, lease, ship and transfer new tires, casings and tubes to consumers and other persons in violation of the statutes" * * * but fails to make any allegation as

to whether or not the defendant, Benjamin Rose was a retailer, distributor, wholesaler or manufacturer, within the meaning and purview of Supplementary Order No. M-15e, [11] subdivision 4 thereof, which permits the selling, leasing, trading, lending, delivering, shipping and transferring of new tires, casings and tubes by any retailer to another retailer or to any distributor, wholesaler or manufacturer.

II.

That the overt acts alleged in Article 14, subdivisions (b), (c), (d), (e), (g), (h), (i) and (j) of Count One of the Indictment, fail to state facts sufficient to constitute a crime against the United States by the defendant, Benjamin Rose, and said overt acts do not negative the exceptions of provisos in the regulations set forth of the Office of Price Administration.

III.

That the setting up of more than one offense in a single Count does not enable the court or jury to deal intelligently with the charge, and seriously handicaps the defendant in making his defense, and may prevent him from pleading former acquittal or conviction by reason of the fact that he does not know whether he is being charged with the crime of selling tires to consumers or delivering tires in violation of the law, or whether or not the persons with whom it is alleged Benjamin Rose had transactions relative to tires and tubes were retailers, distributors, wholesalers or manufacturers.

IV.

That there is no such offense as a Conspiracy to Commit Offenses against the United States; that if there is more than one offense, each offense should be set forth in a separate Count.

V.

That the said Indictment and each Count thereof does not [12] state facts sufficient to constitute a crime against the United States.

VI.

That the two conspiracies alleged in Count One and Count Two of the Indictment are co-existent, and involve the same transaction and are simultaneous in beginning and co-terminus in ending.

VII.

That Count One of the Indictment fails to allege the specific statutes, the violations of which are the object of the conspiracy.

VIII.

That Count One of the Indictment fails to allege the specific regulations which are the objects of the conspiracy, and fails to allege the statute or statutes fixing a penalty for the violation of the regulations.

IX.

That Count Two of the Indictment fails to allege the specific statutes, the violation of which are the object of the conspiracy.

X.

That Count Two of the Indictment fails to allege the specific regulations which are the objects of the conspiracy, and fails to allege the statute or statutes fixing a penalty for the violation of the regulations.

XI.

That Count Two does not state facts sufficient to constitute a crime against the United States, as it does not plead how or [13] in what manner the United States was, could or would have been defrauded, nor does it plead the means that is, the trickery, device or chicane, bribery or deception) by which a department of the government would have had its functions subverted, or an agent deceived or corrupted.

XII.

That there is no statute existing fixing a penalty for the consummation of the objects of the conspiracy alleged in Count One and Count Two of the Indictment.

Wherefore, the defendant, Benjamin Rose prays and demands that the Demurrer to the Indictment be sustained, and that judgment be entered dismissing the Indictment and discharging him from custody.

Dated: February 12, 1943.

Yours, etc.,

BENJAMIN J. GOODMAN

Attorney for Defendant, Benjamin Rose,

Office & P. O. Address,
810 William Fox Building,
808 S. Hill Street,
Los Angeles, California

To: Leo V. Silverstein, Esq.,
United States Attorney [14]

Received copy of the within this 15th day of February, 1943.

LEO V. SILVERSTEIN

U. S. Atty.

Attorney for Plaintiff

[Endorsed]: Filed Feb. 15, 1943. [15]

[Title of District Court and Cause.]

DEMURRER TO INDICTMENT

Come now the defendants, Mac R. Brown, Phil Taplin, Louis Vitagliano and Sam Weinstein, for themselves alone and for no other defendants, demur to the Indictment herein, upon the following grounds:

I.

That Count One of the Indictment fails to state facts sufficient to constitute a crime against the United States by these defendants.

II.

That Count Two of the Indictment fails to state facts sufficient to constitute a crime against the United States by these defendants.

III.

That Count One of the Indictment is insufficient in that the [16] statutes, executive orders, regulations and/or directives contains numerous exceptions which are so incorporated with the language defining the offense, that the ingredients of the offense cannot be accurately described because the exceptions are omitted.

IV.

That Count Two of the Indictment is insufficient in that the statutes, executive orders, regulations and/or directive contains numerous exceptions which are so incorporated with the language defining the offense, that the ingredients of the offense cannot be accurately described because the exceptions are omitted.

V.

That Count One fails to allege whether these defendants or any of them were retailers, distributors, wholesalers or manufacturers as defined by Supplementary Order number M-15-C.

VI.

That Count Two fails to allege whether these defendants or any of them were retailers, distributors, wholesalers or manufacturers as defined by Supplementary Order number M-15-C.

Wherefore, these defendants pray for judgment dismissing the indictment, discharging them and each of them from custody, and exonerating their bonds.

Dated: February 15, 1943.

BENJ. T. WEINSTEIN

Attorney for Defendants Mac
R. Brown, Phil Taplin, Louis
Vitagliano and Sam Wein-
stein [17]

Received copy of the within this 17th day of February, 1943.

LEO V. SILVERSTEIN

U. S. Atty.

Attorney for Plaintiff HKM

[Endorsed]: Filed Feb. 17, 1943. [18]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday the 29th day of March in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Leon R. Yankwich, District Judge.

[Title of Cause.]

No. 15,811—Crim.

This cause coming on for plea of all defendants except defendant Phil Rezniche, who heretofore plead not guilty; Howard V. Calverley, Esq., Assistant U. S. Attorney, appearing for the Government; Benj. T. Weinstein, Esq., appearing for defendants Mac R. Brown, Phil Taplin, Louis Vitagliano, and Sam Weinstein; Robert F. Shippee, Esq., appearing for defendant; Joseph Lieb; Benj. Goodman, Esq., appearing for defendant Benjamin Rose; one motion of Attorney Weinstein, Paul Angelillo, Esq., who is present, is substituted as attorney for defendant Louis Vitagliano. The defendants waive the reading of the Indictment and each defendant enters plea of not guilty to the charges contained in the Indictment, and it is ordered that this cause be, and it hereby is, continued to May 4, 1943, for trial. Samuel Goldstein, Court Reporter, is present and reports the proceedings.

32/761 [26]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 7th day of May in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

No. 15,811—Crim.

This cause coming on for further Jury trial of the defendants Mac R. Brown, Benjamin Rose, Phil Taplin, Louis Vitagliano, and Sam Weinstein; Maurice R. Norcop, Esq., Assistant U. S. Attorney, appearing for the Government; Benj. J. Goodman, Esq., appearing as counsel for the defendant Rose; Robert J. Sullivan, Esq., appearing as counsel for defendants Brown, Taplin and Weinstein; Paul Angelillo, Esq., appearing as counsel for defendant Vitagliano; A. H. Bargion, and H. A. Dewing, Court Reporters, being present and reporting the proceedings; the five defendants on trial, Jury and alternate juror are present; and so stipulated by counsel; it is ordered that trial proceed.

* * * * *

The Government rests.

At 11:55 A.M. the Court reminds the jurors of the admonition heretofore given, and excuses the

jurors until 2 P.M. today, and the jurors retire from the Courtroom. In the absence of the Jury and alternate juror, counsel present proposed instructions to the Court.

The Court makes a statement and orders that the Government elect between the two counts of the indictment, which it will proceed on, and states that the Court is now of the opinion that this case should proceed and be given to the Jury as to all of the five defendants now on trial.

Attorney Norcop states that the Government elects to stand on count one of the indictment and that the trial proceed on that count only. [27]

The Court orders that the trial will proceed as to count one as to the remaining five defendants, and that it is hereby ordered that count two of the indictment as to the remaining five defendants is dismissed.

* * * * *

33/389-391 [28]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 10th day of May in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

No. 15,811—BH Crim.

This cause coming on for further jury trial of the defendants Mac R. Brown, Benjamin Rose, Phil Taplin, Louis Vitagliano, and Sam Weinstein; Maurice Norcop, Esq., Asst. United States Attorney, appearing as counsel for the Government; Benj. J. Goodman, Esq., appearing as counsel for the defendant Rose; Robert J. Sullivan, Esq., appearing as counsel for defendants Brown, Taplin, and Weinstein; Paul Angelillo, Esq., appearing as counsel for the defendant Vitagliano; A. H. Bargion, Court Reporter, being present and reporting the proceedings; the said named defendants being present in Court on bond; the Jury and alternate juror are present, and counsel so stipulate; the Court makes a statement to the Jury as to its order requiring the Government to elect and that the Government has elected to stand on count 1; it is ordered that counsel for the Government proceed with his argument to the Jury.

* * * * *

At 5:03 P.M. the Jury returns into Court; all present as before; the five defendants are present with their respective counsel; the Jury is present, and counsel so stipulate. The Court inquires of the Jury if it has agreed upon a verdict, and the Jury through their foreman states that it has, and pursuant to the Court's order the verdict is presented and read by the Clerk, and upon motion of defendants' counsel the Jury is polled, each juror being

asked if the verdict as presented and read by the Clerk is his verdict, and each juror answers "yes"; and thereupon, the Court orders the verdict filed and entered herein, being as follows:

* * * * *

33/450-452 [29]

[Title of District Court and Cause.]

MOTION IN ARREST OF JUDGMENT

Comes Now the defendant, Benjamin Rose and moves in arrest of judgment as follows:

I.

The indictment fails to state a public offense.

II.

Count One of the Indictment is too vague, indefinite and uncertain as to the nature and cause of the accusation and fails to allege the necessary particulars as to the alleged conspiracy.

III.

Evidence illegally seized was used in evidence, in violation of the Fourth and Fifth Amendments to the United States [31] Constitution.

IV.

There are errors on the face of the record in respect to failure to establish any offense.

V.

The evidence does not support a conviction of a conspiracy to commit offenses against the United States Government.

Dated: May 24, 1943.

BENJAMIN ROSE

Defendant.

BENJAMIN J. GOODMAN,

Attorney for Defendant.

Points and Authorities

I.

A Retailer May Without Certificate Transfer Any New Tire or Tube to Any Retailer, Distributor, Wholesaler or Manufacturer.

O.P.A. Sec. 801 (e).

II.

Other Transfers. (1) By a Retailer or Distributor Without Changing Ownership or Control. Any Retailer or Distributor May Deliver, Ship, or Transfer New Tires or Tubes to Any Warehouse or Premise Owner, Operated, or Controlled by Such Person, Provided There Is No Change in [32] Ownership or Control Involved in This Delivery, Shipment, or Transfer. Records of Such Delivery, Shipment, or Transfer Shall Be Kept and Reports in Connection Therewith Shall Be Made as May Be Required by the Office of Price Administration.

O.P.A. Sec. 801 (f).

III.

As to Whether or Not There Has Been Sufficient Proof of the Defendant's Connection With the Crime of Conspiracy or a Substantive Crime to Be Put Upon His Defense, Is a Matter of Law to Be First Determined by the Court.

Hedderly vs. United States,

193 Fed. 561.

IV.

Even Though One Who Commits an Overt Act With Knowledge of the Conspiracy Is Guilty Although Absent When the Crime Which Is the Object of the Conspiracy Is Committed, Nevertheless He Must Know the Purpose of the Conspiracy in Order to Be Guilty Thereof and Must Have Joined in the Agreement to Be Guilty of a Violation of Law.

Bannon, et al. vs. United States;

156 U. S. 464, 468;

Joplin Mercantile Co. vs. United States,

236 U. S. 531, 535;

Terry vs. United States;

7 Fed. (2d) 28, 29;

Craig vs. United States, (C.C.A.),

81 Fed. (2d) 816, 822. [33]

V.

Although Overt Acts May Be Accomplished by One Charged With Crime, the Statute on Conspiracy Is Not Violated Unless the Overt Act Was Done in Pursuance of the Common Illegal Understanding.

United States vs. Hirsch,
100 U. S. 33, 34;
Weniger vs. United States,
47 Fed (2d) 692, 693.

[Endorsed]: Filed May 24, 1943. [34]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 24th day of May in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable: Ben Harrison, District Judge.

[Title of Cause.]

No. 15,811-BH—Crim.

This cause coming on for hearing on pre-sentence reports of the Probation Officer and sentence of each of above-named defendants on count one of the Indictment; Maurice R. Norcop, Esq., Assistant U. S. Attorney, appearing for the Government; Benj. J. Goodman, Esq., appearing as counsel for the defendant Benjamin Rose; Robert J. Sullivan, Esq., appearing as counsel for defendants Mac R. Brown, Phil Taplin, and Sam Weinstein; Paul Angelillo, Esq., appearing as counsel for defendant Louis Vitagliano; C. W. McClain, Court Reporter,

being present and reporting the proceedings; the defendants Mac R. Brown, Phil Taplin, Louis Vitagliano, and Sam Weinstein, being present; defendant Benjamin Rose being absent.

Attorney Goodman makes a statement re absence of defendant Rose; Attorney Norcop makes a statement; the Court suggests that Government counsel get in touch with the Coast Guard and see if the defendant will be produced, and orders a recess until 10:30 A. M.

Court reconvenes at 10:34 A. M.; all present as before; the defendant Rose is still absent.

Attorney Norcop states that he expects the defendant Rose to be present at 11 A. M.; and Court recesses.

At 10:55 A. M. Court reconvenes herein; all present as before; the defendant Rose is still absent; the other defendants being present; the Court makes a statement and orders time of sentence of defendants continued to 3 P. M. today, and Court adjourns until that time. [35]

Court reconvenes at 3:14 P. M.; all present as before; the five defendants are now present, and C. H. Meador, probation officer, is present.

The Court makes a statement and orders the written motion in arrest of judgment by defendant Rose denied, and an exception is allowed and noted. Attorney Goodman makes a statement; the Court makes statement that defendants or their counsel may make statements, if they so desire, and states

that the Court has read the reports of the Probation Officer.

* * * * *

The Court makes a statement and sentences the five defendants, as follows:

* * * * *

Attorney Goodman moves that the Court indicate the amount of bail for the defendant Rose on appeal. The Court states that it will not fix bail on appeal, as there is no substantial question involved. Attorney Goodman argues in support of his motion to fix bail for defendant Rose, and moves that the Court stay execution and judgment pending application to the U. S. Circuit Court of Appeals for the Ninth Circuit. The Court states that the order denying the motion will stand and the motion to stay execution is denied.

Attorney Angelillo moves that the Court stay execution of judgment as to the defendant Vitagliano. The Court makes a statement and orders the said motion on behalf of defendant Vitagliano denied.

Attorney Goodman states that he now gives oral notice of appeal.

Attorney Angelillo states that he also gives oral notice of appeal. [36]

District Court of the United States, Southern District of California, Central Division

No. 15811-BH. Criminal Indictment in Two counts for violation of U.S.C., Title 18, Sec. 88.

UNITED STATES

v.

BENJAMIN ROSE

JUDGMENT AND COMMITMENT

On this 24th day of May, 1943, came the United States Attorney, and the defendant Benjamin Rose appearing in proper person, and by his counsel, Benj. J. Goodman, Esq. and,

The defendant having been convicted on verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: count one; did unlawfully, wilfully, knowingly, corruptly, fraudulently and feloniously engage in a conspiracy to commit offenses against the United States, that is to say, to sell, trade, lease, ship and transfer new rubber tires, casings, and tubes to consumers and other persons in violation of the statutes, executive orders, regulations and directives referred to in the Indictment; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby com-

mitted to the custody of the Attorney General or his authorized representative for imprisonment for the period of One (1) year and one (1) day in a penitentiary type institution, and pay a fine unto the United States of America in the sum of two thousand (\$2,000.) dollars.

It Is Further Ordered that defendant is remanded to the custody of the U. S. Marshal.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) BEN HARRISON

United States District Judge.

A True Copy. Certified this 24th day of May, A.D., 1943.

(Signed) EDMUND L. SMITH

Clerk.

By 'MURRAY E. WIRE,

Deputy Clerk.

[Endorsed]: Filed May 24, 1943. [37]

District Court of the United States, Southern District of California, Central Division

No. 15811-BH Criminal Indictment in two counts
for violation of U.S.C., Title 18, Secs. 88;

UNITED STATES

v.

LOUIS VITAGLIANO

JUDGMENT AND COMMITMENT

On this 24th day of May, 1943, came the United States Attorney, and the defendant Louis Vitagliano appearing in proper person, and by his counsel, Paul Angelillo, Esq. and,

The defendant having been convicted on verdict of guilty of the offense charged in the Louis Vitagliano in the above-entitled cause, to wit: Count one; did unlawfully, wilfully, knowingly, corruptly, fraudulently and feloniously engage in a conspiracy to commit offenses against the United States, that is to say, to sell, trade, lease, ship and transfer new rubber tires, casings, and tubes to consumers and other persons in violation of the statutes, executive orders, regulations and directives referred to in the Indictment; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, hav-

ing been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of six (6) months in a jail type institution, and pay a fine unto the United States of America in the sum of one thousand (\$1,000.) dollars.

It Is Further Ordered that defendant is remanded to the custody of the U. S. Marshal.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) BEN HARRISON,
United States District Judge.

A True Copy. Certified this 24th day of May,
A. D., 1943.

(Signed) EDMUND L. SMITH,
Clerk.

(By) MURRAY E. WIRE,
Deputy Clerk.

[Endorsed]: Filed May 24, 1943. [38]

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of Said Court:

Sir:

Please issue for defendants Benjamin Rose & Louis Vitagliano Indictment, arraignment, plea,

demurrer, demand for bill of particulars, ruling on demurrer, ruling on bill of particulars, motion for arrest of judgment, verdict, judgment, stipulation dated May 25, 1943, permitting filing one bill of exceptions and one appeal for two defendants notice of appeal.

BENJAMIN J. GOODMAN,
Attorney for appellant Benjamin Rose.

PAUL ANGELILLO,
Atty. for Vitagliano.

[Endorsed]: Filed May 25, 1943. [48]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 48 inclusive contain full, true and correct copies of Indictment; Minute Order entered February 8, 1943; Demurrer to Indictment (Defendant Rose); Demurrer to Indictment (Defendant Vitagliano (et al)); Demand for Bill of Particulars by defendant Benjamin Rose; Demand for Bill of Particulars by defendants Mac R. Brown, Phil Taplin, Louis Vitagliano and Sam Weinstein; Minute Order entered March 15, 1943; Minute Order entered March 29, 1943; Portion of Minute Order entered May 7, 1943; Portion of

Minute Order entered May 10, 1943; Verdicts; Motion in Arrest of Judgment; Portion of Minute Order entered May 24, 1943; Judgment and Commitment (Defendant Rose); Judgment and Commitment (Defendant Vitagliano); Notice of Appeal (Defendant Rose); Notice of Appeal (Defendant Vitagliano); Stipulation and Order re one Bill of Exceptions and Praecipe which, with the exception of Assignment of Errors and Bill of Exceptions which have not as yet been filed or settled, constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

I do further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$17.30 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 27th day of May, A. D. 1943.

[Seal]

EDMUND L. SMITH,

Clerk.

By THEODORE HOCKE,

Deputy Clerk. [49]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 4th day of May in the

year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable: Ben Harrison District Judge.

[Title of Cause.]

No. 15,811-BH Crim.

This cause coming on for jury trial; Maurice R. Norcop, Esq., Assistant U. S. Attorney, appearing for the Government; Robert S. Shippee, Esq., appearing as counsel for defendant Joseph Lieb; Benj. J. Goodman, Esq., appearing as counsel for defendant Benjamin Rose; Robert J. Sullivan, Esq., appearing as counsel for defendants Mac R. Brown, Phil Taplin, and Sam Weinstein; Paul Angelillo, Esq., appearing as counsel for defendant Vitagliano; the said defendants being present in Court on bond, and defendant Phil Rezniche being present in propria persona, having heretofore waived counsel; H. A. Dewing and A. H. Bargion, Court Reporters, being present and reporting the proceedings.

The case is called, and both sides answering ready, it is ordered that trial proceed.

On motion of Attorney Norcop, it is ordered that the indictment as to the defendant Phil Rezniche be, and it hereby is, dismissed, and his bond exonerated, and further ordered that trial proceed as to the other six defendants, and that a jury be impaneled; whereupon, the Clerk draws the names of the following jurors, who take their seats in the jury box.

1. Harrison R. Ward

2. B. A. Jacobs
3. Thomas M. Reid
4. Wm. Murphy
5. Guy W. Rice
6. Ray M. McMahan
7. A. C. Getty
8. H. H. Fogwell
9. Paul O. Davis
10. Herbert H. Culling
11. Kenneth L. Smith
12. Frank L. Henaman

The Court reads portions of the indictment to the prospective jurors, and examines the jurors for cause. [54]

B. A. Jacobs is excused for cause, and it is ordered that one more name be drawn, and the name of Charles H. Hahn is drawn. The Court examines the jurors further for cause, and the jurors in the box are passed for cause.

Harrison R. Ward is excused by plaintiff on peremptory challenge; it is ordered that one more name be drawn, and the name of Thos. R. Knudsen is drawn; said juror is examined by the Court for cause, and is passed for cause.

Wm. Murphy is excused by defendants on peremptory challenge; it is ordered that one more name be drawn, and the name of M. E. Barnhill is drawn; said juror is examined and excused for cause; it is ordered that one more name be drawn, and the name of James Loudon is drawn; said juror is examined by the Court for cause and passed for cause.

Roy M. McMahan is excused by plaintiff on peremptory challenge; it is ordered that one more name be drawn, and the name of S. Allen Greer is drawn; said juror is examined by the Court for cause and excused for cause; it is ordered that one more name be drawn, and the name of Thomas A. Gould is drawn; said juror is examined by the Court for cause and passed for cause.

Guy W. Rice is excused by defendants on peremptory challenge; it is ordered that one more name be drawn, and the name of Harry B. McDowell is drawn; said juror is examined by the Court for cause, and passed for cause.

Thomas R. Knudsen is excused by the plaintiff on peremptory challenge; it is ordered that one more name be drawn, and the name of Nels P. Johnson is drawn; said juror is examined by the Court for cause, and passed for cause.

Frank L. Henaman is excused by defendants on peremptory challenge; it is ordered that one more name be drawn, and the name of G. H. Lathrop is drawn; said juror is examined by the Court for cause and passed for cause.

The Government exercises no peremptory challenge, and the defendants excuse G. H. Lathrop on peremptory challenge; it is ordered that one more name be drawn, and the name of Ernest G. Carter is drawn; said juror is examined by the Court for cause and passed for cause. [55]

Ernest G. Carter is excused by plaintiff on peremptory challenge; it is ordered that one more name be drawn, and the name of Albert F. Bolz

is drawn; said juror is examined by the Court for cause and passed for cause.

Albert F. Bolz is excused by defendants on peremptory challenge; it is ordered that one more name be drawn, and the name of Harry Wine is drawn; said juror is examined by the Court for cause and passed for cause.

Charles H. Hahn is excused by defendants on peremptory challenge; it is ordered that one more name be drawn, and the name of David Harrison is drawn; said juror is examined by the Court for cause and passed for cause.

Harry Wine is excused by plaintiff on peremptory challenge; it is ordered that one more name be drawn, and the name of Eugene Lyon is drawn; said juror is examined by the Court for cause and passed for cause.

A. C. Getty is excused by defendants on peremptory challenge; it is ordered that one more name be drawn, and the name of Geo. T. Atchley is drawn; said juror is examined by the Court for cause and excused for cause. It is ordered that one more name be drawn, and the name of Glenn Helms is drawn; said juror is examined by the Court for cause, and passed for cause.

Thomas M. Reid is excused by defendants on peremptory challenge; it is ordered that one more name be drawn, and the name of Clarence B. Hoadley is drawn; said juror is examined by the Court for cause and passed for cause.

David Harrison is excused by plaintiff on peremptory challenge; it is ordered that one more

name be drawn, and the name of D. C. Wright is drawn; said juror is examined by the Court for cause and excused for cause; it is ordered that one more name be drawn, and the name of James J. Walsh, Jr. is drawn; said juror is examined by the Court for cause and passed for cause.

James J. Walsh is excused by defendants on peremptory challenge; it is ordered that one more name be drawn, and the name of Raymond Zens is drawn; said juror is examined by the Court for cause and passed for cause, and there being no further peremptory challenges, the jurors now in the box are accepted and sworn as the jury for the trial of this cause, viz.: [56]

THE JURY

1. Nels P. Johnson
2. Raymond Zens
3. Clarence B. Hoadley
4. James Loudon
5. Harry B. McDowell
6. Thos. A. Gould
7. Glenn Helms
8. H. H. Fogwell
9. Paul O. Davis
10. Herbert H. Culling
11. Kenneth L. Smith
12. Eugene Lyon

On motion of Government counsel, it is ordered that one alternate juror be impaneled. The name of Fred Deal is drawn; said juror is examined by

the Court for cause and passed for cause, and there being no challenge, Fred Deal is sworn as alternate juror for this case.

The remaining jurors not impaneled are excused to Thursday, May 6, 1943, at 9:45 A.M., to report in Courtroom No. 3.

At 11:20 A.M. the Court admonishes the jurors, including the alternate juror, that during the progress of this trial and the recesses therein, they are not to speak to anyone or permit anyone to speak to them about this cause, or any matter or thing therewith connected; that until said cause is finally submitted to them for their deliberation under the instructions of the Court they are not to speak to each other about this cause, or any matter or thing therewith connected, or form or express any opinion concerning the merits of the trial until it is finally submitted to them, and the jurors are excused and retire from the Courtroom.

In the absence of the jurors, counsel and Court discuss certain matters, and Attorney Goodman, in behalf of defendants, moves that the Court require the Government to elect which counts the Government will proceed to trial on, and argues in support of motion to elect.

Attorney Norcop argues in opposition to said motion to elect made on behalf of defendants.

The Court orders motion to elect denied as to all defendants.

At 11:30 A.M. court recesses to 11:40 A.M.; court reconvenes; all present as before; the six defendants on trial and the jury and alternate juror are present; it is ordered that trial proceed.

Attorney Norcop makes opening statement to the jury of what the Government expects to be able to prove by the evidence to be offered by the Government.

All defendants' counsel reserve opening statement at this time.

At 12 o'clock noon counsel stipulate that the admonition heretofore given may be deemed made at time of each recess during this trial with- [57] out necessity of repeating same. The Court further admonishes the jury and recesses to 1:45 P.M. today.

Court reconvenes at 1:45 P.M.; all present as before; the six defendants on trial and the jury and alternate juror are present. It is ordered that trial proceed.

On motion of defendants' counsel, the jury and alternate juror are excused by the Court and retire from the Courtroom, and in the absence of the jury and alternate juror, all others appearing as before, Attorney Sullivan moves to dismiss each of the two counts of the indictment, or that the Court instruct the jury to return a verdict of not guilty as to each defendant on each count.

The Court makes a statement and states that it will permit the Government's counsel to make a further opening statement to the jury, and orders said motions of defendants denied, and an exception allowed each defendant.

The Court and counsel discuss the allegations in the indictment, and at 2:10 P.M., pursuant to the

Court's order, the jury and alternate juror return into court; all present as before, and defendants being present, it is ordered that trial proceed.

Attorney Norcop makes a further statement to the jury on behalf of the Government, supplementing opening statement made this morning of what the Government expects to be able to prove.

The defendants waive the reading of the indictment.

Henry Novisoff is called, sworn, and testifies for the Government.

U. S. Exhibits Nos. 1, 2, 3, 4, and 5 are admitted into evidence.

Said witness Novisoff testifies further.

Lewis C. Kilgore is called, sworn, and testifies for the Government.

William S. Fitzer is called, sworn, and testifies for the Government.

Court recesses at 3:05 P.M. and reconvenes at 3:16 P.M.; all present as before; the six defendants on trial and the jury and alternate juror are present, and counsel so stipulate; it is ordered that trial proceed.

William S. Fitzer, heretofore sworn, resumes the stand and testifies further.

U. S. Exhibit No. 6 is admitted into evidence.

Said witness Fitzer testifies further. [58]

Robert James Campau is called, sworn, and testifies for the Government. George M. Hood is called, sworn, and testifies for the Government.

U. S. Exhibit No. 7 is admitted into evidence.

Claude Garn is called, sworn, and testifies for the Government.

U. S. Exhibit No. 8 is admitted into evidence.

Jack Foster is called, sworn, and testifies for the Government.

U. S. Exhibit No. 9 is admitted into evidence.

Ralph R. Walker is called, sworn, and testifies for the Government.

Mike Kreling is called, sworn, and testifies for the Government.

U. S. Exhibit No. 10 is admitted into evidence.

Said witness Kreling testifies further.

Ralph C. Earnest is called, sworn, and testifies for the Government.

John Dundas is called, sworn, and testifies for the Government.

At 4:32 P.M. the Court reminds the jurors of the admonition heretofore given, and orders the further trial of this cause continued to May 5, 1943, at 10 A.M. and court adjourns until that time. [59]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 5th day of May in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

No. 15,811—BH Crim.

This cause coming on for further jury trial; Maurice R. Norcop, Esq., Assistant U. S. Attorney, appearing for the Government; Robert S. Shippee, Esq., appearing as counsel for defendant Joseph Lieb; Benj. J. Goodman, Esq., appearing as counsel for defendant Benjamin Rose; Robert J. Sullivan, Esq., appearing as counsel for defendants Mac R. Brown, Phil Taplin, and Sam Weinstein; Paul Angelillo, Esq., appearing as counsel for defendant Louis Vitagliano; A. H. Bargion, Court Reporter, and H. A. Dewing, Court Reporter, being present and reporting the proceedings; the said defendants being present in Court on bond; the Jury and alternate juror are present, and counsel so stipulate; it is ordered that trial proceed.

Douglass F. Scott is called, sworn, and testifies for the Government.

Horace B. Randall is called, sworn, and testifies for the Government.

U. S. Exhibit No. 11 is admitted into evidence.

Said witness Randall testifies further on cross-examination by Attorney Goodman.

Ted W. Mendenhall is called, sworn, and testifies for the Government, and on voir dire examination by Attorney Goodman.

U. S. Exhibits Nos. 12 and 13 are admitted into evidence.

Don Bagley is called, sworn, and testifies for the Government.

Sam Kelber is called, sworn, and testifies for the Government.

U. S. Exhibit No. 14 is admitted into evidence.

Said witness Kelber testifies further on cross-examination by Attorney Goodman and by Attorney Angelillo, and Attorney Sullivan, respectively.

Stella Kelber is called, sworn, and testifies for the Government.

Sam Kelber, heretofore sworn, is recalled, resumes the stand and [60] testifies further on further cross-examination by Attorney Sullivan.

At 10:55 A. M. Court recesses to 11:04 A. M.; Court reconvenes; all present as before; the six defendants on trial, jury and alternate juror are present, and counsel so stipuate; it is ordered that trial proceed.

Bill Soukesian is called, sworn, and testifies for the Government.

U. S. Exhibit No. 15 is admitted into evidence.

Witness Saukesian testifies on cross-examination by Attorney Goodman.

C. A. Humbert is called, sworn, and testifies for the Government.

U. S. Exhibits Nos. 16, 17, 18 and 19 are admitted into evidence.

Said witness Humbert testifies further.

At 12 o'clock noon the Court reminds the jurors of the admonition heretofore given, and recesses to 1:30 P. M.

Court reconvenes at 1:30 P. M.; all present as before; the six defendants on trial and the jury and alternate juror are present, and counsel so stipulate; it is ordered that trial proceed.

C. A. Humbert, heretofore sworn, resumes the stand and testifies further.

Josephine Humbert is called, sworn, and testifies for the Government.

Louis Phillips is called, sworn, and testifies for the Government; the witness is withdrawn, and

Rubin Slavett is called, sworn, and testifies for the Government.

U. S. Exhibit No. 20 is admitted into evidence.

Said witness Slavett testifies on cross-examination by Attorneys Goodman and Angelillo.

J. C. Cooley is called, sworn, and testifies for the Government.

U. S. Exhibits Nos. 21 and 21-A are admitted into evidence.

Witness Cooley testifies on cross-examination by Attorney Goodman.

Sam Parsner is called, sworn, and testifies for the Government.

U. S. Exhibit No. 22 is admitted into evidence.

Said witness Parsner testifies on cross-examination by Attorneys Goodman and Angelillo.

Frank Montgomery is called, sworn, and is withdrawn, and

Jack Foster, heretofore sworn, is recalled, resumes the stand and testifies further for the Government on further direct examination by Attorney Norcop.

U. S. Exhibit No. 23 is admitted into evidence.

[61]

Said witness Foster testifies further on cross-examination by Attorney Sullivan.

Frank Montgomery, heretofore sworn, is recalled, resumes the stand and testifies for the Government on direct examination by Attorney Norcop and on cross-examination by Attorney Sullivan.

At 3:05 P. M. Court recesses and reconvenes at 3:18 P. M.; all present as before; the six defendants on trial, jury and alternate juror are present; it is ordered that trial proceed.

Henry Immerman is called, sworn, and testifies for the Government.

James B. Graham is called, sworn, and testifies for the Government on direct examination by Attorney Norcop and on cross-examination by Attorney Angelillo.

Paul B. Parmelee is called, sworn, and testifies for the Government.

U. S. Exhibit No. 24 is marked for Identification.

Said witness Parmelee testifies on cross-examination by Attorneys Goodman and Angelillo.

Sam Rappan is called, sworn, and testifies for the Government.

U. S. Exhibit No. 25 is marked for identification.

Fred H. Doane is called, sworn, and testifies for the Government on direct examination by Attorney Norcop and on cross-examination by Attorney Goodman.

At 4 P. M. Marie G. Zellner is now present as Court Reporter and reporting the proceedings.

D. J. Hamilton is called, sworn, and testifies for the Government.

U. S. Exhibit No. 26 is admitted into evidence.

Said witness Hamilton testifies on cross-examination by Attorney Goodman.

Defendants' Exhibit A is marked for identification.

At 4:30 P. M. the Court reminds the jurors of the admonition heretofore given and orders the further trial of this cause continued to May 6, 1943, at 10 A. M. and Court adjourns until that time. [62]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 6th day of May in the year of our Lord one thousand nine hundred and forty-three.

[Title of Cause.]

No. 15,811-Crim.

This cause coming on for further Jury trial of defendants Mac R. Brown, Joseph Lieb, Benjamin Rose, Phil Taplin, Louis Vitagliano and Sam Weinstein; Maurice R Norcop, Esq., Assistant U. S. Attorney, appearing for the Government; Robert S. Shippee, Esq., appearing as counsel for defendant Joseph Lieb; Benj. J. Goodman, Esq., appearing as counsel for defendant Benjamin Rose; Robert J. Sullivan, Esq., appearing as counsel for defendants Mac R. Brown, Phil Taplin, and Sam Weinstein; Paul Angelillo, Esq., appearing as counsel for defendant Vitagliano; A. H. Bargion and H. A. Dewing, Court Reporters, being present and reporting the proceedings; the six defendants on

trial and jury and alternate juror being present, and counsel so stipulate; it is ordered that trial proceed.

Henry L. Doyle is called, sworn, and testifies for the Government on direct examination by Attorney Norcop.

U. S. Exhibit No. 27 is admitted into evidence.

Said witness Doyle testifies on cross-examination by Attorney Goodman.

Donald D. Harwood is called, sworn, and testifies for the Government on direct examination by Attorney Norcop, and on cross-examination by Attorney Goodman.

Norman Irwin is called, sworn, and testifies for the Government on direct examination by Attorney Norcop, and on cross-examination by Attorney Goodman.

U. S. Exhibit No. 28 is admitted into evidence.

Robert Brown is called, sworn, and testifies for the Government on [63] direct examination by Attorney Norcop, and on cross-examination by Attorneys Shippee and Goodman.

At 11:06 A. M. Court recesses and reconvenes at 11:15 A. M.; all present as before; the six defendants on trial and Jury and alternate juror are present, and counsel so stipulate; it is ordered that trial proceed.

Herman Steinberg is called, sworn, and testifies for the Government on direct examination by Attorney Norcop. There is no cross-examination.

Mrs. Lorane Brown is called, sworn, and testifies

for the Government on direct examination by Attorney Norcop and on cross-examination.

Ray H. Paddock is called, sworn, and testifies for the Government on direct examination by Attorney Norcop and on cross-examination by Attorneys Goodman and Sullivan.

At 11:50 A. M. Court recesses to 1:15 P. M. to-day.

Court reconvenes at 1:28 P. M.; all present as before; the six defendants on trial, and the Jury and alternate juror are present, and counsel so stipulate; it is ordered that trial proceed.

Nathan Levy is called, sworn, and testifies for the Government on direct examination by Attorney Norcop.

On motion of defendants' attorney, it is ordered that the testimony of the witness Levy re purchase of six tires be stricken, and the Court instructs the Jury respecting said testimony stricken.

Witness Levy is cross-examined by Attorneys Goodman and Angelillo.

Norman Irwin, heretofore sworn, is recalled, resumes the stand and testifies further on examination by Attorney Norcop, and on cross-examination by Attorney Goodman.

U. S. Exhibit No. 29 is marked for identification.

William J. Davis is called, sworn, and testifies for the Government on direct examination by Attorney Norcop.

U. S. Exhibit No. 30 is marked for identification.

Said witness Davis testifies on cross-examination by Attorney Goodman.

Leo Isenhower is called, sworn, and testifies for the Government on direct examination by Attorney Norcop, and on cross-examination by Attorney Goodman. The Court grants permission to defendants to make offer of proof in the absence of the jury later. [64]

David M. Hoffman is called, sworn, and testifies for the Government on direct examination by Attorney Norcop and on cross-examination by Attorney Goodman.

At 2:48 P. M. court recesses and reconvenes at 3 P. M.; all present as before; the six defendants on trial and the jury and alternate juror being present, and counsel so stipulate; it is ordered that trial proceed; whereupon,

Jack Foster, heretofore sworn, is again recalled, resumes the stand and testifies further on direct examination by Attorney Norcop.

U. S. Exhibit No. 30, heretofore marked for identification, is admitted into evidence.

Said witness Foster testifies on cross-examination by Attorney Goodman.

On motion of Attorney Norcop, it is ordered that the indictment on both counts as to the defendant, Joseph Lieb, be, and it hereby is, dismissed, and his bond exonerated.

At 4:35 P. M. the Court reminds the jurors of the admonition heretofore given, and orders the further trial of defendants Brown, Rose, Taplin, Vitagliano and Weinstein continued to 10 A. M. May 7, 1943, and Court adjourns until that time. [65]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 7th day of May in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable: Ben Harrison, District Judge.

[Title of Cause.]

No. 15,811—Crim.

This cause coming on for further jury trial of the defendants Mac R. Brown, Benjamin Rose, Phil Taplin, Louis Vitagliano, and Sam Weinstein; Maurice R. Norcop, Esq., Assistant U. S. Attorney, appearing for the Government; Benj. J. Goodman, Esq., appearing as counsel for the defendant Rose; Robert J. Sullivan, Esq., appearing as counsel for defendants Brown, Taplin and Weinstein; Paul Angelillo, Esq., appearing as counsel for defendant Vitagliano; A. H. Bargion, and H. A. Dewing, Court Reporters, being present and reporting the proceedings; the five defendants on trial, jury and alternate juror are present; and so stipulated by counsel; it is ordered that trial proceed.

On motion of Attorney Goodman, the Court orders the testimony of Mr. and Mrs. Brown stricken, and instructs the jury relative to same, and also orders the testimony of the witness Foster relative to defendant Lieb be stricken, and the jury is instructed relative thereto.

Jack Foster, heretofore sworn, resumes the stand and testifies further on further cross-examination by Attorney Goodman.

Defendants' Exhibits B, C, D, E and F are marked for identification.

Witness Foster testifies on cross-examination by Attorney Angelillo.

Defendants' Exhibit G is marked for identification.

At 11 A.M. court recesses and reconvenes at 11:12 A.M.; all present as before; the five defendants on trial and jury and alternate juror are present; and counsel so stipulate; it is ordered that trial proceed.

Jack Foster resumes the stand and testifies further on further cross-examination by Attorney Angelillo and on redirect examination by Attorney Norcop.

Samuel K. Dowden is called, sworn, and testifies for the Government [66] on direct examination by Attorney Norcop and on cross-examination by Attorneys Goodman and Angelillo.

Wallis S. Storms is called, sworn, and testifies for the Government on direct examination by Attorney Norcop.

U. S. Exhibit No. 31 is marked for identification; U. S. Exhibit No. 32 is admitted into evidence.

Said witness Storms testifies on cross-examination by Attorney Goodman. The Government rests.

At 11:55 A.M. the Court reminds the jurors of the admonition heretofore given, and excuses the jurors until 2 P.M. today, and the jurors retire from the courtroom. In the absence of the jury and

alternate juror, counsel present proposed instructions to the Court.

The Court makes a statement and orders that the Government elect between the two counts of the indictment, which it will proceed on, and states that the Court is now of the opinion that this case should proceed and be given to the jury as to all of the five defendants now on trial.

Attorney Norcop states that the Government elects to stand on count one of the indictment and that the trial proceed on that count only.

The Court orders that the trial will proceed as to count one as to the remaining five defendants, and that it is hereby ordered that count two of the indictment as to the remaining five defendants is dismissed.

Attorney Goodman separately moves to strike certain testimony and evidence, on behalf of all defendants, and separately moves to strike certain testimony and evidence, on behalf of the defendant Rose only, and states the grounds of each of said motions; and the Court orders each separate motion denied and an exception is noted for each defendant, and reflected by the court reporter's shorthand notes.

Attorney Goodman makes a further statement, and requests a recess at this time until 1:30 P.M. today.

The Court makes a statement and the Court at the hour of 12:10 P.M. recesses until 1:30 P.M. today.

At 1:30 P.M. court reconvenes; appearances same as before noted; the five defendants on trial are

present; the jury and alternate juror are absent; it is ordered that counsel proceed.

Attorney Goodman states that the defendants have decided that they [67] will not put on any evidence, and separately moves, on behalf of defendant Rose, to strike certain testimony of certain witnesses, and separately moves that the Court instruct the jury to return a verdict of not guilty as to the defendant Rose.

The Court orders each of said separate motions denied, and an exception allowed.

Attorney Sullivan moves, on behalf of defendant Brown, Taplin and Weinstein, to strike certain testimony of certain witnesses, and separately moves that the Court instruct the jury to return a verdict of not guilty as to each of the said three defendants.

The Court orders each of said motions on behalf of said three defendants denied, and exception is allowed each defendant.

Attorney Angelillo moves to strike, on behalf of defendant Vitagliano, certain evidence, and moves that the Court instruct the jury to return a verdict of not guilty as to said defendant.

The Court orders each of said motions on behalf of defendant Vitagliano denied, and an exception allowed.

At 1:40 P.M. court recesses until 2 P.M. today.

Court reconvenes at 2 P.M.; all present as before; the five defendants on trial and the jury and alternate juror are present; it is ordered that trial proceed.

All defendants rest.

The Court makes a statement and reminds the jurors of the admonition heretofore given, and orders the further trial of the five defendants on count 1 continued to 11 A.M. May 10, 1943, and the jury and alternate juror are excused and retire from the courtroom.

In the absence of the jury, the Court and counsel discuss the time to be allowed for arguments to the jury, and at 2:10 P.M. court adjourns. [68]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 10th day of May in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable: Ben Harrison, District Judge.

[Title of Cause.]

No. 15,811-BH—Crim.

This cause coming on for further jury trial of the defendants Mae R. Brown, Benjamin Rose, Phil Taplin, Louis Vitagliano, and Sam Weinstein; Maurice Norcop Esq., Asst. United States Attorney, appearing as counsel for the Government; Benj. J. Goodman, Esq., appearing as counsel for the defendant Rose; Robert J. Sullivan, Esq., appearing as counsel for defendants Brown, Taplin, and Wein-

stein; Paul Angelillo, Esq., appearing as counsel for the defendant Vitagliano; A. H. Bargion, Court Reporter, being present and reporting the proceedings; the said named defendants being present in court on bond; the jury and alternate juror are present, and counsel to stipulate; the Court makes a statement to the jury as to its order requiring the Government to elect and that the Government has elected to stand on count 1; it is ordered that counsel for the Government proceed with his argument to the jury.

At 11:04 A.M. Attorney Norcop argues to the jury on behalf of the Government.

At 12 o'clock noon the Court reminds the jurors of the admonition heretofore given, and recesses to 1 P.M. today.

Court reconvenes at 1 P.M.; all present as before; the five defendants on trial and the jury and alternate juror are present, and all counsel so stipulate; it is ordered that counsel proceed with argument to the jury.

Attorney Goodman argues to the jury on behalf of defendant Rose.

At 2 P.M. Attorney Angelillo argues to the jury on behalf of defendant Vitagliano.

At 2:31 P.M. Attorney Sullivan argues to the jury on behalf of defendants Brown, Taplin, and Weinstein. [69]

At 2:57 P.M. court recesses and reconvenes at 3:10 P.M.; all present as before; the five defendants on trial and the jury and alternate juror are present,

and all counsel so stipulate; it is ordered that trial proceed.

Attorney Norcop argues to the jury on behalf of the Government in closing.

At 3:34 P.M. the Court instructs the jury and alternate juror on the law of the case. There are no objections to the Court's instructions as given.

At 3:50 P.M. bailiffs Saunders and Ward, pursuant to the Court's order, are sworn as officers to care for the jury. The alternate juror is discharged and excused until further notice to report, and at 3:53 P.M. blank form of verdict and indictment, and paper exhibits, are given to the jury and the jury retires to the jury room to deliberate upon its verdict, in charge of said officers so sworn.

At 4:50 P.M., pursuant to the Court's order, Frank J. Turner, bailiff, is sworn as an officer to care for the jury.

At 5:03 P.M. the jury returns into court; all present as before; the five defendants are present with their respective counsel; the jury is present, and counsel so stipulate. The Court inquires of the jury if it has agreed upon a verdict, and the jury through their foreman states that it has, and pursuant to the Court's order the verdict is presented and read by the Clerk, and upon motion of defendants' counsel the jury is polled, each juror being asked if the verdict as presented and read by the clerk is his verdict, and each juror answers "yes"; and thereupon, the Court orders the verdict filed and entered herein, being as follows: [70]

[Verdict set out in full at page 93 of this printed transcript.]

The Court orders the jury discharged and excused from further service in this Court until notified.

The Court makes a statement, and orders this cause as to each of the five defendants referred to the Probation Officer for pre-sentence investigation and report, and hearing on said reports and time of sentence of each of the five defendants on count 1 is continued to Monday, May 24, 1943, at 9:30 A.M., and the defendants are permitted to remain at liberty on their bonds now on file in cause No. 15,659—Crim., U. S. vs. Brown, et al. [71]

[Title of District Court and Cause.]

STIPULATION RE EXHIBITS

It Is Hereby Stipulated by and between counsel for Plaintiff and Appellee and counsel for Defendant and Appellant, Benjamin Rose, that respecting the exhibits mentioned in the proposed Bill of Exceptions to be filed herein, an order may be entered by this court certifying all of the original exhibits mentioned in said Bill of Exceptions which are not reproduced therein as a part thereof, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

Dated: June 16, 1943.

CHARLES H. CARR

United States Attorney

By MAURICE NORCOP

Attorney for Plaintiff.

Assistant United States Atty.

BENJAMIN J. GOODMAN

Attorney for Defendant and

Appellant, Benjamin Rose.

[Endorsed]: Filed June 16, 1943. [72]

[Title of District Court and Cause.]

ORDER RE EXHIBITS IN BILL OF
EXCEPTIONS

Pursuant to stipulation heretofore entered into between counsel for Plaintiff and Appellee and counsel for the Defendant and Appellant, Benjamin Rose, that respecting the exhibits in the proposed Bill of Exceptions to be filed herein,

It Is Ordered, that the Clerk of this court be, and hereby is, directed to certify to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, all such original exhibits herein which are not incorporated in said Bill of Exceptions as a part thereof.

Dated this 16 day of June, 1943.

BEN HARRISON

Judge of the United States
Circuit Court.

[Endorsed]: Filed June 16, 1943. [73]

[Title of District Court and Cause.]

STIPULATION EXTENDING TIME TO
SETTLE BILL OF EXCEPTIONS

It Is Hereby Stipulated by and between the United States of America, Plaintiff and Appellee, in the above entitled cause acting through its counsel of record, and Benjamin Rose, Defendant and Appellant in the above entitled action, and his counsel,

First: That the time within which the Bill of Exceptions in the above entitled action, on behalf of the Appellant, be settled, is extended to and including the 10th day of August, 1943.

Second: That Defendant and Appellant will file his Assignment of Errors and proposed Bill of Exceptions on or before the 16th day of July, 1943.

Third: That the Plaintiff and Appellee file its proposed amendments, if any, to said Bill of Exceptions, on or before the 1 day of Aug., 1943.

Dated: June 16 1943.

CHARLES H. CARR,

United States Attorney

By 'MAURICE NORCOP

Assistant United States Atty.

Attorney for Plaintiff.

BENJAMIN J. GOODMAN

Attorney for Defendant and

Appellant, Benjamin Rose.

[Endorsed]: Filed June 16, 1943. [74]

ORDER EXTENDING TIME WITHIN WHICH
TO SETTLE BILL OF EXCEPTIONS AND
FILE ASSIGNMENT OF ERRORS

Upon reading and filing the stipulation of counsel for Plaintiff and Appellee, and counsel for Defendant and Appellant, Benjamin Rose; and it is also otherwise appearing to the court that there is good cause therefor,

It Is Hereby Ordered, that the time within which the Bill of Exceptions in the above entitled action on behalf of the Appellant be settled is extended to and including the 10 day of August 1943;

It is Further Ordered, that the Defendant and Appellant will file his Assignment of Errors and proposed Bill of Exceptions on or before the 16 day of July 1943; and

It Is Further Ordered that the Plaintiff and Appellee file its proposed amendments, if any, to said Bill of Exceptions on or before the 1 day of Aug. 1943.

Dated: June 16 1943.

BEN HARRISON

United States District Judge.

[Endorsed]: Filed June 16, 1943. [75]

[Title of District Court and Cause.]

STIPULATION TO EXTEND TIME TO
SETTLE BILL OF EXCEPTIONS

It Is Hereby Stipulated by and between the United States of America, plaintiff and appellee

in the above-entitled cause, acting through its counsel of record, and Louis Vitagliano, defendant and appellant, through his counsel, Morris Lavine:

First: That the time within which the Bill of Exceptions in the above-entitled action, on behalf of the appellant, may be settled, is extended to and including the 10th day of August, 1943.

Second: That defendant and appellant will file his assignment of errors and proposed bill of exceptions on or before the 16th day of July, 1943.

Third: That the plaintiff and appellee will file its proposed amendments, if any, to said bill of exceptions, on or before the 1st day of August, 1943.

Dated: June 16, 1943.

CHARLES H. CARR,

United States Attorney

By MAURICE NORCOP

Attorney for Plaintiff and
Appellee

MORRIS LAVINE

Attorney for Defendant and
Appellant Louis Vitagliano

[Endorsed]: Filed June 17, 1943. [76]

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
TO SETTLE BILL OF EXCEPTIONS AND
FILE ASSIGNMENT OF ERRORS

Upon reading and filing the stipulation of counsel for plaintiff and appellee, and counsel for defendant

and appellant Louis Vitagliano, and it also otherwise appearing to the court that there is good cause therefor,

It Is Hereby Ordered that the time within which the bill of exceptions in the above-entitled action on behalf of the appellant be settled is extended to and including the 10th day of August, 1943; and

It Is Further Ordered that the defendant and appellant file his assignment of errors and proposed bill of exceptions on or before the 16th day of July, 1943; and

It Is Further Ordered that the plaintiff and appellee file its proposed amendments, if any, to said bill of exceptions on or before the 1st day of August, 1943.

BEN HARRISON

United States District Judge

[Endorsed]: Filed June 17, 1943. [77]

[Title of District Court and Cause.]

STIPULATION RE EXHIBITS

It Is Hereby Stipulated by and between counsel for plaintiff and appellee and counsel for defendant and appellant, Louis Vitagliano, that respecting the exhibits mentioned in the proposed bill of exceptions to be filed herein, an order may be entered by this court certifying all of the original exhibits mentioned in said bill of exceptions which are not reproduced therein as a part thereof, to the United

States Circuit Court of Appeals, for the Ninth
Judicial Circuit.

Dated: June 16, 1943.

CHARLES H. CARR,

United States Attorney

By MAURICE NORCOP

Attorneys for Plaintiff

MORRIS LAVINE

Attorney for Defendant Louis
Vitagliano

[Endorsed]: Filed June 17, 1943. [78]

[Title of District Court and Cause.]

ORDER RE EXHIBITS IN BILL OF
EXCEPTIONS

Pursuant to a stipulation heretofore entered into between counsel for plaintiff and appellee and counsel for the defendant and appellant, Louis Vitagliano, that respecting the exhibits in the proposed bill of exceptions to be filed herein,

It Is Ordered that the clerk of this court be, and he hereby is, directed to certify to the United States Circuit Court of Appeals, for the Ninth Circuit, all such original exhibits herein which are not incorporated in said bill of exceptions as a part thereof.

Dated: June 17, 1943.

BEN HARRISON

Judge of the United States
District Court

[Endorsed]: Filed June 17, 1943. [79]

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the District Court of the United
States, Southern District of California, Central
Division:

You will please prepare the following record in
the above-entitled cause for the Ninth Circuit Court
of Appeals:

1. Indictment;
2. Demurrer of Benjamin Rose to Indictment;
3. Demurrer of Louis Vitagliano to Indictment;
4. Demand for Bill of Particulars by Benjamin
Rose;
5. Demand for Bill of Particulars by Louis
Vitagliano;
6. Notice of Motion for Demand for Bill of Par-
ticulars by Benjamin Rose;
7. Notice of Motion for Demand for Bill of
Particulars by Louis Vitagliano;
- 7a. All clerk's minutes of proceedings;
8. Minutes and Rulings on Hearing of Demurrer
and Demand for Bill of Particulars by Benjamin
Rose and Louis Vitagliano;

9. Verdicts;

10. Judgments and Commitments of Benjamin Rose and Louis Vitagliano;

11. Motions in Arrest of Judgment of Benjamin Rose and Louis Vitagliano; [80]

12. Minutes and Rulings on Motions of Arrest of Judgments of Benjamin Rose and Louis Vitagliano;

13. Notices of Appeal of Benjamin Rose and Louis Vitagliano;

14. Stipulation and Order Consolidating Appeals of Benjamin Rose and Louis Vitagliano;

15. Bill of Exceptions and Assignment of Errors;

16. This Praecipe.

MORRIS LAVINE

Attorney for Appellants

Received copy of the within Praecipe this 17th day of December, 1943.

CHARLES H. CARR

United States Attorney

By 'MARY WENTWORTH

[Endorsed]: Filed Dec. 17, 1943. [81]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
SUPPLEMENTAL TRANSCRIPT

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of

California, do hereby certify that the foregoing pages numbered from 49 to 82 inclusive contain full, true and correct copies of: Notice of Motion of Benjamin Rose and Demand for Bill of Particulars; Notice of Motion of Louis Vitagliano et al for Demand for Bill of Particulars; Minute Orders Entered May 4, 1943, May 5, 1943, May 6, 1943, May 7, 1943 and May 10, 1943 respectively; Stipulation re Exhibits; Order re Exhibits in Bill of Exceptions; Stipulation Extending Time for defendant Benjamin Rose to Settle Bill of Exceptions; Order Extending Time within which defendant Benjamin Rose may Settle Bill of Exceptions and File Assignment of Errors; Stipulation Extending Time for defendant Louis Vitagliano to Settle Bill of Exceptions; Order Extending Time within which defendant Louis Vitagliano may Settle Bill of Exceptions and File Assignment of Errors; Stipulation re Exhibits; Order re Exhibits in Bill of Exceptions; and Praecipe which, together with Original Bill of Exceptions, Original Assignments of Error, Original Exhibits and the Transcript of Record heretofore certified on May 27, 1943, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit. I further certify that my fees for preparing, comparing, correcting and certifying the foregoing Supplemental Record amount to \$14.30 which sum has been paid to me by Appellants.

Witness my hand and the seal of said District Court this 5 day of April, 1944.

[Seal] EDMUND L. SMITH, Clerk

By THEODORE HOCKE

Deputy Clerk.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10445

BENJAMIN ROSE and LOUIS VITAGLIANO,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

AFFIDAVIT FOR ENLARGEMENT OF TIME
TO LODGE BILL OF EXCEPTIONS, ETC.

State of California

County of Los Angeles—ss.

Morris Lavine, being first duly sworn deposes and says:

That he is the attorney for the appellants in the above entitled case; that the time within which to lodge the proposed bill of exceptions has been fixed for July 16, 1943, by the United States District Judge Ben Harrison, and the time within which appellee may file amendments thereto has been set for August 10, 1943.

That affiant has had two stenographers working on the proposed bill of exceptions; that the Chief Justice of the Supreme Court of California asked affiant to come to San Francisco on the death penalty case of *People v. William Leva Hough*, in which that court vacated the submission and set the case for argument in San Francisco on July 6, 1943, and that owing to transportation problems affiant did not return to Los Angeles until July 9, 1943;

That affiant also filed a motion for a remand of the case of *Zap v. United States* in the Ninth Circuit Court of Appeals, to which a response has been filed, requiring corrections and additions to said motion to be presented to the Ninth Circuit Court of Appeals.

That upon his return to Los Angeles affiant was engaged in the preparation for trial of the case of *People v. De Vernaza*, set for July 12th in Division 5 of the Municipal Court of the City of Los Angeles.

Wherefore, affiant prays that this Honorable Court enlarge the time within which appellants may lodge their proposed bill of exceptions to September 2, 1943; that the time within which appellee may file its proposed amendments thereto be enlarged to September 17, 1943; that the time within which the proposed bill of exceptions may be approved and settled by the court be fixed as September 30, 1943; and that the time within which the assignments of error may be filed be fixed as September 30, 1943.

Dated: July 13, 1943.

MORRIS LAVINE

Subscribed and sworn to before me this 13th day of July, 1943.

ZOA L. ZACCHE

Notary Public in and for said
County and State

Received copy of within this 9th day August and of domini 1943.

CHARLES H. CARR

By MISS ALLEN
(J. ROGUS)

[Endorsed]: Filed Aug. 9, 1943.

[Title of Circuit Court of Appeals and Cause.]

ORDER ENLARGING TIME TO LODGE BILL
OF EXCEPTIONS

Upon reading the affidavit of Morris Lavine, and good cause appearing therefor,

It Is Hereby Ordered that the time within which the appellants' proposed bill of exceptions may be lodged in the United States District Court, Southern District of California, Central Division, be enlarged to September 2, 1943, the date within which appellee may file its proposed amendments thereto be enlarged to September 17, 1943, and the date the bill of exceptions may be approved and settled by the court be fixed as September 30, 1943; and that the time within the proposed assignments of errors may be filed be fixed as September 30, 1943.

Dated: July 13, 1943.

(Signed) ALBERT LEE STEPHENS

Judge

Received copy within this 9th day of August and of domini 1943.

CHARLES H. CARR,
JANICE ROGUS

[Endorsed]: Filed Aug. 9, 1943.

At a stated term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the thirtieth day of August in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable Francis A. Garrecht, Circuit Judge,
Presiding,

Honorable William Denman, Circuit Judge,

Honorable William H. Healy, Circuit Judge.

[Title of Cause.]

No. 10445

ORDER EXTENDING TIME TO FILE ASSIGNMENTS OF ERROR AND TO SETTLE AND FILE BILL OF EXCEPTIONS

Upon consideration of the motion of appellants, and affidavit of Mr. Morris Lavine, counsel for

appellants in support thereof, and by direction of the Court,

It Is Ordered that the time within which appellants may lodge their proposed bill of exceptions herein be, and hereby is extended to and including October 15, 1943; that the appellee may have to and including October 25, 1943 within which time to propose any amendments thereto, and that the bill of exceptions may be settled and filed, and the assignments of error filed on or before October 30, 1943.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 30th day of August, 1943.

[Seal] PAUL P. O'BRIEN,

Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed Aug. 31, 1943.

[Title of Circuit Court of Appeal and Cause.]

AFFIDAVIT FOR ENLARGEMENT OF TIME
AND ORDER

ORDER

Upon reading the within affidavit of Morris Lavine, and good cause appearing therefor,

It Is Ordered that the time within which to lodge the proposed bill of exceptions be enlarged to and including December 1, 1943, together with assignments of errors; that the appellee have to December 15th to propose amendments thereto, and that the Court have to December 30th within which to settle the same.

Dated: October 14, 1943.

(s) CURTIS D. WILBUR

Judge.

(s) WILLIAM DENMAN

(s) ALBERT LEE STEPHENS

AFFIDAVIT FOR ENLARGEMENT OF TIME

State of California

County of Los Angeles—ss.

Morris Lavine, being first duly sworn deposes and says:

That the time within which to lodge the proposed bill of exceptions in the above-entitled case has been fixed for October 15, 1943, and for the government to propose amendments thereto for October 25th, with five days thereafter for the Court to settle the same;

That affiant is engaged in a hearing on writ of error coram nobis before the Honorable William McKay to set aside the death penalty in the case of *People v. Lyle Gilbert, et al*; that he has also been engaged in various trials and hearings in other courts; that he is preparing a very lengthy bill of exceptions in the case of *United States v. Zap*

on appeal to this court, due October 21st, and is preparing several briefs both in the District Court of Appeal and the Supreme Court; that this case involves several intricate and interesting points of law concerning O.P.A. rules and regulations; that stenographic help is difficult to obtain, and affiant needs 45 days additional time within which to complete and lodge said bill of exceptions and assignments of error.

Wherefore, affiant prays that this Honorable Court enlarge the time within which appellant may lodge the bill of exceptions in this cause and assignments of error to and including December 1, 1943; that appellee may have to December 15th to propose amendments thereto, and that the Court may have to December 30th to settle the same.

MORRIS LAVINE

Subscribed and sworn to before me this 12th day of October, 1943.

ZOA L. ZACCHE.

Notary Public in and for said
County and State.

A true copy. Attest. Oct. 14, 1943.

[Seal] PAUL P. O'BRIEN.

[Endorsed]: Filed Oct. 14, 1943. Paul P. O'Brien, Clerk.

[Endorsed]: Filed Oct. 14, 1943. Edmund L. Smith, Clerk, by Irwin Hames, Deputy Clerk.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT FOR ENLARGEMENT OF TIME
AND ORDER ENLARGING TIME

ORDER ENLARGING TIME

Upon reading the affidavit of Morris Lavine, and good cause appearing therefor,

It Is Ordered that the time within which appellants may lodge the proposed bill of exceptions and assignments of error be enlarged to December 20, 1943; that the appellee have to January 10 to propose amendments thereto, and that the Court have to January 20th within which to settle the same.

Dated: November 27, 1943.

ALBERT LEE STEPHENS,
Judge.

CURTIS D. WILBUR,
Senior United States Circuit
Judge.

FRANCIS A. GARRECHT,
United States Circuit Judge.

A True Copy. Attest: Dec. 3, 1943.

PAUL P. O'BRIEN,
Clerk.

[Endorsed]: Filed Dec. 3, 1943. Paul P. O'Brien,
Clerk.

AFFIDAVIT FOR ENLARGEMENT OF TIME

State of California,

County of Los Angeles—ss.

Morris Lavine, being first duly sworn, depose and says:

That he is the attorney for the above-named appellants; that the case involves intricate questions of law affecting the Office of Price Administration; that the case was tried by other attorneys and affiant is studying the record and all of the assignments made prior to and during the trial of the case for the purpose of getting up a proper assignment of errors which must be lodged with the bill of exceptions;

That in order to prepare a proper assignment of errors covering the intricate questions involved affiant needs 30 days additional time.

Wherefore, affiant prays that this Honorable Court extend the time within which to lodge the proposed bill of exceptions and assignments of error in this case to and including December 30, 1943.

MORRIS LAVINE

Subscribed and sworn to before me this 27 day of November, 1943.

ZOA L. ZACCHE,

Notary Public in and for said County and State.

[Endorsed]: Filed Dec. 4, 1943. Edmund L. Smith, Clerk, by John A. Childress, Deputy Clerk.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT FOR ENLARGEMENT OF TIME.
STIPULATION AND ORDER ENLARG-
ING TIME

ORDER ENLARGING TIME

Upon reading the affidavit of Ernest A. Tolin,
and good cause appearing therefor,

It Is Ordered that the time within which ap-
pellee may lodge amendments to the proposed Bill
of Exceptions and Assignments of Error be en-
larged to February 10, 1944, and that the Court
have to and including February 28, 1944, within
which to settle the same.

Dated: January 5th, 1944.

ALBERT LEE STEPHENS,
United States Circuit Judge.
CURTIS D. WILBUR

A True Copy. Attest: Jan. 10, 1944.

PAUL P. O'BRIEN,
Clerk.

[Endorsed]: Filed Jan. 10, 1944. Paul P.
O'Brien, Clerk.

AFFIDAVIT FOR ENLARGEMENT OF TIME

State of California,

County of Los Angeles—ss.

Ernest A. Tolin, being first duly sworn, deposes and says:

That he is the Assistant United States Attorney assigned to the preparation of the above entitled case; that at the trial of the case the Government was represented by an Assistant United States Attorney who is not at this time a member of the staff of the United States Attorney's office; that there is no one now on the staff of the United States Attorney's office who participated at the trial of the cause; that a proposed Bill of Exceptions consisting of 318 pages was received by the office of the United States Attorney on December 18, 1943; that the time within which the appellee may propose amendments has heretofore been fixed as January 10, 1944; that the transcript consists of 650 pages and that at least 35 exhibits, many of them consisting of several pages, were introduced at the trial of the case; that in order to prepare proper proposed amendments to said Bill of Exceptions affiant needs 30 days additional time.

Wherefore, affiant prays that this Honorable Court extend the time within which to lodge proposed amendments to the Bill of Exceptions in this case to and including the 10th day of February, 1944.

ERNEST A. TOLIN

Subscribed and sworn to before me this 4 day of January, 1944.

[Seal] MARY M. DONETTI,
Notary Public in and for the said County and State.

STIPULATION

It is hereby stipulated that appellee may have to and including the 10th day of February, 1944, within which to propose amendments to appellants proposed Bill of Exceptions herein, and that the District Court have to and including February 28, 1944, to settle and engross the same.

CHARLES H. CARR,

United States Attorney.

By ERNEST A. TOLIN,

Assistant United States At-
torney.

MORRIS LAVINE,

Attorney for Appellants.

[Endorsed]: Filed Jan. 11, 1944. Edmund L. Smith, Clerk, by Irwin Hames, Deputy Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER

Upon reading and filing the stipulation of the United States of America and Benjamin Rose and Louis Vitagliano, by their respective counsel, and the Court being fully advised in the premises and good cause appearing therefor,

It Is Hereby Ordered that the time within which the District Court may settle the bill of exceptions in this cause is enlarged and extended to and including March 26, 1944, and the time within which the District Court may engross said bill of exceptions as settled is enlarged and extended to April 5, 1944.

Dated: February 25, 1944.

CURTIS D. WILBUR,
ALBERT LEE STEPHENS,
U. S. Circuit Court Judges.

A True Copy. Attest: Feb. 28, 1944.

PAUL P. O'Brien,
Clerk.

[Endorsed]: Filed Feb. 28, 1944. Paul P. O'Brien, Clerk.

[Endorsed]: Filed March 2, 1944. Edmund L. Smith, Clerk, by Irwin Hames, Deputy Clerk.

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

NOTICE OF HEARING

To: Charles H. Carr, United States Attorney:

Please Take Notice that the within Bill of Exceptions of the defendants and appellants, Benjamin Rose and Louis Vitagliano, will be brought on for settlement before the Honorable Ben Harrison, District Judge, in his court room, on January 14th,

1944, at the hour of 10 A. M., or as soon thereafter as said matter can be heard.

Dated: December 17, 1943.

MORRIS LAVINE,

Attorney for Defendants and
Appellants.

Be it remembered that the following pleadings and documents were filed and the following minutes made and entered herein in addition to those pleadings and minutes which are a part of the Clerk's record on appeal. [1*]

United States District Court, Southern District of
California, Central Division

No. 15811

THE UNITED STATES OF AMERICA

vs.

MAC R. BROWN, et al.

INDICTMENT

Viol.: Title 18, U.S.C., Sec. 88

At a stated term of said court, begun and holden at the City of Los Angeles, County of Los Angeles, within and for the Central Division of the Southern District of California, on the second Monday of

*Page numbering appearing at foot of page of original Bill of Exceptions.

September, in the year of our Lord one thousand nine hundred and forty-two:

The grand jurors for the United States of America, impaneled and sworn in the Central Division of the Southern District of California, and inquiring for the Southern District of California, upon their oaths present:

1. Mac R. Brown, Joseph Lieb, Benjamin Rose, Phil Reznice, Phil Taplin, Louis Vitagliano, and Sam Weinstein are hereby indicted and made defendants herein. At all times herein mentioned, each of said defendants has been a resident of the County of Los Angeles, State of California, within the Central Division of said District.

2. All of the acts of the President of the United States of America herein averred were done by him pursuant to power and authority in him vested by the Congress by virtue of that Act of Congress approved June 28, 1940 (Public Law No. 671, 76th Congress, 3rd Session, as amended), entitled "An [2] Act to Expedite National Defense, and for other Purposes," (54 Stat. 676, 1940) as amended by an Act of Congress to amend the same, approved May 31, 1941, (Public Law No. 89, 77th Congress, Ch. 157, 1st Session, H. R. 4534) (55 Stat. 236, 1941), and as amended by Title III of the Second War Powers Act, 1942 (Public Law No. 507, 77th Congress, 2d Session, March 27, 1942).

3. At all times herein mentioned prior to January 24, 1942, the Office of Production Management was an agency of the United States of America duly created by the President and engaged in pro-

mulgating and administering priority and allocation regulations with respect to materials required for the prosecution of the war, including rubber and rubber products.

4. The Office of Price Administration is and was at all times hereinafter mentioned an agency of the United States of America duly created by the President and engaged in promulgating and administering regulations deemed necessary for national defense and prosecution of the war, and since December 27, 1941, has been continuously engaged in enforcing and administering rubber tire and tube rationing regulations.

5. On December 10, 1941, said Office of Production Management made, issued and promulgated an order entitled "Supplementary Order No. M-15-b," prohibiting the sale throughout the United States of America of new rubber tires [3] and tubes from that date until December 22, 1941, except when sold as part of new or used vehicles.

6. On December 19, 1941, said Office of Production Management made, issued and promulgated an order entitled "Amendment No. 1 to Supplementary Order No. M-15-b to Restrict the Use of Rubber," which extended said prohibition of sales of new rubber tires and tubes from December 22, 1941, to January 5, 1942, and prohibited the sale of new rubber tires and tubes as parts of used vehicles.

7. On December 27, 1941, said Office of Production Management, with the written approval of the President of the United States of America, made, issued and promulgated an order entitled "Supple-

mentary Order No. M-15-c to Restrict Transactions in New Rubber Tires, Casings and Tubes," which established rubber tire and tube rationing regulations prohibiting all further sales and deliveries of new rubber tires and tubes on and after that date except in accordance with such regulations, and which authorized the Office of Price Administration to enforce and carry out said regulations and to adopt, promulgate and enforce further regulations for that purpose, and provided that said Office of Price Administration might exercise such powers through local tire rationing boards of its own creation and appointment.

8. On December 30, 1941, said Office of Price Administration regularly made, issued and promulgated rubber tire regulations effective on and after said December 30, 1941, [4] which prohibited the sale, lease, delivery, trade and transfer throughout the United States, of new rubber tires, casings and tubes to consumers and other persons without certificates from such local tire rationing boards.

9. On January 16, 1942, the President of the United States made, issued and promulgated Executive Order No. 9024, which created the War Production Board as an agency of the United States of America.

10. On January 24, 1942, the President of the United States made, issued and promulgated Executive Order No. 9040, which transferred all powers and duties of the Office of Production Management to the War Production Board.

11. On January 24, 1942, the War Production Board, with the written approval of the President of the United States, made, issued and promulgated Directive No. 1, which authorized the Office of Price Administration to exercise the powers and duties conferred upon the President to ration materials, including rubber and rubber products.

12. On February 11, 1942, the said Office of Price Administration made, issued and duly promulgated "Tire Rationing Regulations (Revised)" effective February 19, 1942, and superceding Tire Rationing Regulations theretofore issued on December 30, 1941, which said regulations effective February 19, 1942, prohibited the sale, lease, loan, trade, shipment, delivery or transfer of new rubber tires and tubes or of retreaded or recapped rubber tires without certificates issued [5] by local tire rationing boards and except as otherwise provided in said regulations. Said regulations were issued under Subsection (a) of Section 2 of Title III of Pub. L. 507, 77th Cong. approved March 27, 1942, and commonly known as the Second War Powers Act.

13. Beginning on or about December 12, 1941, and continuing thereafter up to and including the date of the return of this indictment, the defendants Mac R. Brown, Joseph Lieb, Benjamin Rose, Phil Rezniche, Phil Taplin, Louis Vitagliano and Sam Weinstein, and other persons whose names are to the Grand Jurors unknown, in the County of Los Angeles, State of California, division and district aforesaid, did unlawfully, wilfully, knowingly, cor-

ruptly, fraudulently and feloniously engage in a conspiracy to commit offenses against the United States, that is to say, to sell, trade, lease, ship and transfer new rubber tires, casings, and tubes to consumers and other persons in violation of the statute, executive orders, regulations and directives hereinbefore referred to.

14. The defendants have committed and performed within the County of Los Angeles, State of California, the following overt acts in furtherance of and in order to effect the objects of said conspiracy:

(a) On or about May 28, 1942, the defendants Phil Taplin, Sam Weinstein and Louis Vitagliano caused to be transported to and stored in a building at 3100 East Wabash Avenue, Los Angeles, California, approximately [6] three hundred (300) new rubber automobile tires.

(b) On or about July 21, 1942, at Los Angeles, California, defendant Benjamin Rose purchased and took possession of approximately forty-eight (48) new rubber automobile tires and approximately one hundred and thirty (130) new rubber tubes from one Mike Kreling.

(c) That on or about August 1, 1942, at Los Angeles, California, defendant Benjamin Rose rented premises for the storage of new rubber automobile tires and tubes and falsely and fraudulently represented to the agent of the owner of said premises that said premises

were to be used for the storage of certain equipment and furniture in which he, said Benjamin Rose, was dealing.

(d) That on or about August 2, 1942, at Ontario, California, defendants Benjamin Rose and Sam Weinstein arranged for the purchase by defendant Benjamin Rose from one Sam Kelher, doing business as Sammy's Ontario Tire and Wheel Exchange, of approximately four hundred and ninety-one (491) new rubber automobile and truck tires and of approximately six hundred thirty-eight (638) new rubber automobile and truck tubes which the defendant Benjamin Rose thereupon caused to be transported from the premises of said Sam Kelher.

(e) That on or about August 22, 1942, at Pasadena, California, defendant Benjamin Rose purchased approximately two hundred twelve (212) new rubber automobile [7] tires and approximately seven hundred ninety-eight (798) new rubber tubes from one Rueben Slavett and thereupon defendants Sam Weinstein and Louis Vitagliano assisted said defendant Benjamin Rose in the removal of said tires and tubes from the premises of said Rueben Slavett, on which occasion defendant Benjamin Rose directed the transfer man transporting said tires and tubes for him to describe them as "auto accessories" on his statement of services rendered.

(f) On or about September 9, 1942, at Los Angeles, California, defendant Mac R. Brown purchased and obtained possession of approximately thirty-eight (38) new rubber automobile tires from one Sam Parsner and said tires were thereupon transported away from the premises of said Sam Parsner in a truck obtained for said purpose by defendant Louis Vitagliano.

(g) That on or about September 17, 1942, at Los Angeles, California, defendant Benjamin Rose falsely represented to an Investigator of the Office of Price Administration that he had sold the new rubber automobile tires theretofore purchased from Mike Kreling to Golden Lubricants, Inc., a corporation.

(h) That on or about September 29, 1942, in the night-time, at Los Angeles, California, defendant Benjamin Rose caused a number of new rubber automobile tires to be moved from Wabash and Thornton Streets, Los [8] Angeles, California, to a place of storage near Bronson Street and Sunset Boulevard, Los Angeles, California, and caused a number of new rubber automobile tires to be moved on said date from said Wabash and Thornton Streets to a place of storage near 3300 West Washington Boulevard, Los Angeles, California, and directed the transfer man handling the transportation of said tires to describe said tires on his statement of services rendered as "auto accessories".

(i) That on or about October 1, 1942, at about midnight, at Los Angeles, California, defendant Benjamin Rose removed a number of new rubber automobile tires from a place of storage near 3300 West Washington Boulevard, Los Angeles, California, to a place or places unknown.

(j) That on or about September 24, 1942, at Los Angeles, California, the defendant Benjamin Rose called upon Leo Doyle and Walter Welman and offered to sell them approximately three hundred (300) new automobile rubber tires and approximately one thousand (1000) new rubber tire tubes.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [9]

COUNT TWO

And the Grand Jurors, inquiring as aforesaid, upon their oaths aforesaid, do hereby reallege and incorporate as if here set forth in full all of the allegations contained in paragraphs 1 to 12 of Count One of this Indictment and in paragraph 14 of Count One of this Indictment.

15. Beginning on or about December 12, 1941, and continuously thereafter up to and including the date of the return of this Indictment, the defendants in the County of Los Angeles, State of California, division and district aforesaid, did unlawfully, wilfully, knowingly, corruptly, feloniously

and fraudulently conspire together and with other persons whose names are to the Grand Jurors unknown to defraud the United States of America by impairing, defeating and obstructing the proper and lawful functions of an agency of the United States of America, to-wit: the Office of Price Administration in the protection and preservation of a vital material, to-wit: rubber, and more particularly, rubber automobile tires essential to the successful prosecution of the war and the maintenance of the national defense of the United States and the public safety by means of selling, trading, leasing, shipping and transferring new rubber automobile tires, casings, and tubes to consumers and other persons without rationing certificates, and attempting to sell, trade, lease, ship and transfer new rubber automobile tires, casings and tubes to consumers and other persons without rationing certificates, in violation [10] of the statutes, executive order, regulations, and directives hereinbefore referred to.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

LEO V. SILVERSTEIN,

United States Attorney. [11]

Bail, \$7500—Brown

4000—Rose & Weinstein

2500—Taplin, Vitagliano & Rezniche

1000—Lieb

[Endorsed]: Filed Jan. 27, 1943. [12]

In the United States District Court, Southern District of California, Central Division

No. 15811

UNITED STATES OF AMERICA,
Plaintiff,

vs.

MAC R. BROWN, JOSEPH LIEB, BENJAMIN
ROSE, PHIL REZNICHE, PHIL TAPLIN,
LOUIS VITAGLIANO and SAM WEIN-
STEIN,

Defendants.

NOTICE OF MOTION FOR DEMAND FOR
BILL OF PARTICULARS

To the Plaintiff Above Named and to Leo V. Silverstein, Esq., United States Attorney:

You, and Each of You, Will Please Take Notice, that the defendant, Benjamin Rose, by his counsel and for himself, will on March 1, 1943, at the hour of 10:00 o'clock A. M. or as soon thereafter as the matter can be heard in the courtroom of Honorable Leon R. Yankwich, in Courtroom No. 5, demand a bill of particulars from the plaintiff, in accordance with the Demand for Bill of Particulars filed and served herewith.

Said motion will be based upon all the records and files in the above entitled action, the Demand for Bill of Particulars served and filed herewith, and the Memorandum of Points and Authorities served and filed with the Demurrer.

Dated: February 16th, 1943.

Yours, etc.

BENJAMIN J. GOODMAN,

Attorney for Defendant, Benjamin Rose.

Office & P. O. Address, 810 Wm. Fox Building, Los Angeles, California, TR. 8101.

To: Leo V. Silverstein, Esq.,
United States Attorney. [13]

[Title of District Court and Cause.]

DEMAND FOR BILL OF PARTICULARS,
BY DEFENDANT, BENJAMIN ROSE

Comes now the defendant, Benjamin Rose, by his counsel and for himself alone, moves the Honorable Court above named that the United States of America be required to furnish to said defendant, a Bill of Particulars informing him concerning the allegations of the Indictment in said cause, upon the following subjects, to wit:

COUNT ONE

1. What particular provisions of the regulations referred to in the Indictment, did the defendant conspire to violate?

2. The statute defining offenses against the United States did the defendant conspire to violate?

3. In *any* way does conspiring to violate any of

the provisions of any of the regulations referred to in the indictment constitute an offense? [14]

COUNT TWO

1. What function of the government of the United States did the defendant conspire to defraud?

2. What means did the defendant conspire to use to overreach any government officer or agent?

3. What tricks, chicanery, deception or fraud did the defendant conspire to practice upon any government representative or government officer connected with the matter charged in the indictment?

4. In what way does the conspiracy to sell new tires and tubes, not the property of the United States, tend to defraud the United States, within the meaning of the U.S.C.A. Title 18, Section 80?

Said demand will be based upon the face of the Indictment and other pleadings, records and files in said cause, and upon the points and authorities heretofore served and filed with the demurrer to the Indictment.

Dated: February 16th, 1943.

BENJAMIN J. GOODMAN,

Attorney for Defendant, Benjamin Rose.

Office & P. O. Address, 810 Wm. Fox Building, 608
S. Hill St., Los Angeles, California, TR. 8101.

To: Leo V. Silverstein, Esq.,
United States Attorney. [15]

Received copy of the within this 18th day of
February, 1943.

LEO V. SILVERSTEIN,

U. S. Att'y.

Attorney for Plaintiff.

By R. MacKAY.

[Endorsed]: Filed Feb. 18, 1943. [16]

[Title of District Court and Cause.]

NOTICE OF MOTION AND FOR DEMAND A
BILL OF PARTICULARS

To the United States of America and Leo V. Silver-
stein, United States Attorney:

You will please take notice that on Monday, the
1st day of March, 1943, at 10 o'clock A.M. of said
day, or as soon thereafter as counsel can be heard,
at the Courtroom of Judge Leon R. Yankwich,
No. 5, Federal Building, City of Los Angeles,
County of Los Angeles, State of California, the
above-named defendants will move the Court for
a Bill of Particulars.

Said motion will be made upon this notice, the
papers on file in this case, the demand for Bill
of Particulars and the Memorandum of Points
and Authorities on Demand for Bill of Particulars,
and served herewith.

Dated: Los Angeles, California, February 15,
1943.

BENJ. T. WEINSTEIN,
Attorney for Defendants
named. [17]

[Title of District Court and Cause.]

DEMAND FOR BILL OF PARTICULARS BY
DEFENDANTS MAC R. BROWN, PHIL
TAPLIN, LOUIS VITAGLIANO AND
SAM WEINSTEIN

Come now the defendants Mac R. Brown, Phil Taplin, Louis Vitagliano and Sam Weinstein by their counsel and for themselves alone move the Honorable Court above named that the United States of America be required to furnish to said defendants and to each of them a Bill of Particulars informing them concerning the allegations of the indictment in said cause upon the following subjects, to wit:

Count One

1. What particular provisions of the regulations referred to in the indictment did the defendants conspire to violate?

2. What statute defining offenses against the United States did the defendants conspire to violate?

3. In what way does conspiracy to violate any

of the provisions of any of the regulations referred to in the indictment constitute an offense? [18]

Count Two

1. What function of the government of the United States did the defendants conspire to defraud?

2. What means did the defendants conspire to use to overreach any government officer or agent?

3. What tricks, chicane, deception or fraud did the defendants conspire to practice upon any government representative or government officer connected with the matter charged in the indictment?

4. In what way does the conspiracy to sell new tires and tubes, not the property of the United States, tend to defraud the United States within the meaning of U.S.C.A. Title 18, Section 88?

Said demand will be based upon the face of the indictment and other pleadings, records and files in said cause and upon the points and authorities attached hereto.

Dated: February 15, 1943.

BENJ. T. WEINSTEIN,
Attorney for Defendants Mac R. Brown, Phil Taplin, Louis Vitagliano and Sam Weinstein.

Received copy of 17th day of February, 1943.

LEO V. SILVERSTEIN,
U. S. Atty.
Attorney for Plaintiff
HKM

[Endorsed]: Filed Feb. 17, 1943. [19]

At a stated term, to-wit: February Term, A.D. 1943 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday the 15th day of March in the year of our Lord one thousand nine hundred and forty three.

Present: The Honorable Leon R. Yankwich, District Judge.

[Title of Cause.]

No. 15,811-Crim.

This cause coming on for hearing on demurrers of defendants Mac R. Brown (et al) and hearing on demand of above defendants for a bill of particulars; * * * It is ordered that demurrers be, and they are overruled, and motion for bill of particulars denied.

Attorney Benjamin Goodman, Esq., appearing for defendant Benjamin Rose, presents demurrer and motion for bill of particulars on behalf of said defendant and argues in support thereof; Attorney Calverley argues in reply. It is ordered that said demurrer be, and it is hereby, overruled and motion for bill of particulars is denied. [20]

At a stated term, to-wit: The February term, A.D. 1943 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday, the 4th day of May in the year of our Lord one thousand nine hundred and forty three.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

No. 15,811-Crim.

Defendants present.

On motion of Attorney Norcop, it is ordered that the indictment as to the defendant Phil Rezniche be, and it hereby is, dismissed, and his bond exonerated, and further ordered that trial proceed as to the other six defendants, and that a jury be impaneled;

* * * * *

In the absence of the Jurors, counsel and Court discuss certain matters, and Attorney Goodman, in behalf of defendants, moves that the Court require the Government to elect which counts the Government will proceed to trial on, and argues in support of motion to elect.

Attorney Norcop argues in opposition to said motion to elect made on behalf of defendants.

The Court orders motion to elect denied as to all defendants. * * * [21]

On motion of the defendants' counsel, the jury and alternate juror are excused by the Court and retire from the Courtroom, and in the absence of the jury and alternate juror, all others appearing as before, Attorney Sullivan moves to dismiss each of the two counts of the indictment, or that the Court instruct the jury to return a verdict of not guilty as to each defendant on each count.

The Court makes a statement and states that it will permit the Government's counsel to make a further opening statement to the jury, and orders said motions of defendants denied, and an exception allowed each defendant. [22]

* * * * *

At a stated term, to-wit: The February term, A.D. 1943 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 7th day of May in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

No. 15-811—Crim.

* * * The Court makes a statement and orders that the Government elect between the two counts of the indictment, which it will proceed on, and states that the Court is now of the opinion that this case

should proceed and be given to the jury as to all of the five defendants now on trial.

Attorney Norcop states that the Government elects to stand on count one of the indictment and that the trial proceed on that count only.

The Court orders that the trial will proceed as to count one as to the remaining five defendants, and that it is hereby ordered that count two of the indictment as to the remaining five defendants is dismissed. [23]

Attorney Goodman separately moves to strike certain testimony and evidence, on behalf of all defendants, and separately moves to strike certain testimony and evidence on behalf of the defendant Rose only, and states the grounds of each of said motions; and the Court orders each separate motion denied and an exception is noted for each defendant, as reflected by the court reporter's notes.

* * * * *

Attorney Goodman states that the defendants have decided that they will not put on any evidence, and separately moves, on behalf of the defendant Rose, to strike certain testimony of certain witnesses, and separately moves that the Court instruct the jury to return a verdict of not guilty as to the defendant Rose.

The Court orders each of said separate motions denied, and an exception allowed. •

Attorney Sullivan moves, on behalf of defendants Brown, Taplin and Weinstein, to strike certain testimony of certain witnesses, and separately moves that the Court instruct the jury to return

a verdict of not guilty as to each of the said three defendants.

The Court orders each of said motions on behalf of said three defendants denied, and exception is allowed each defendant.

Attorney Angelillo moves to strike, on behalf of defend- [24] ant Vitagliano, certain evidence, and moves that the Court instruct the jury to return a verdict of not guilty as to said defendant.

The Court orders each of said motions on behalf of defendant Vitagliano denied, and an exception allowed. [25]

[Title of District Court and Cause.]

VERDICTS

We the Jury in the above-entitled cause, find the defendants as follows:

Mac R. Brown, guilty as charged in count one of the indictment

Benjamin Rose, guilty as charged in count one of the indictment

Phil Taplin, guilty as charged in count one of the indictment

Louis Vitagliani, guilty as charged in count one of the indictment

and Sam Weinstein, guilty as charged in count one of the indictment.

Dated: Los Angeles, California, May 10, 1943.

HARRY B. McDOWELL,

Foreman.

[Endorsed]: Filed May 10, 1943. [26]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant:

Benjamin Rose,
c/o United States Coast Guard,
Wilmington, California

Name and Address of Attorney for Appellant:

Benjamin J. Goodman,
608 S. Hill Street,
Los Angeles, California.

Offenses: U. S. Code Title 18, Section 88.

Date of Judgment: May 24, 1943.

Brief Description of Judgments and Sentences:
One year and one day in the penitentiary and Two
Thousand (\$2,000.00) Dollars fine.

I, the above named Appellant, hereby appeal to
the United States Circuit Court of Appeals for the
Ninth Circuit from the judgments and sentences
above mentioned on the [27] grounds set forth
below.

Pursuant to Rule V, I hereby serve notice that I
elect not to enter upon the service of the sentence
pending appeal and that the judgments and sen-
tences be stayed pending the appeal.

Dated, Los Angeles, California, May 25, 1943.

BENJAMIN ROSE

Appellant

BENJAMIN J. GOODMAN

Attorney for Appellant

Grounds of Appeal:

1. The Indictment is in violation of the Sixth Amendment to the Constitution of the United States, in failing to inform the accused of the nature and cause of the accusation;
2. The Indictment is in violation of the due process of law guaranteed by the Fifth Amendment to the Constitution of the United States;
3. The indictment fails to state a public offense;
4. The District Court erred in refusing a Bill of Particulars;
5. The District Court erred in over-ruling the demurrer to the Indictment, the indictment is vague, indefinite and uncertain;
6. The Appellant was denied due process of law guaranteed by the Fifth Amendment to the Constitution of the United States in the procedure of proceedings of the case; [28]
7. The Indictment also charges two offenses of the same character;
8. The verdicts are contrary to the law and evidence; the evidence shows the appellant to be innocent of the crime of which he was convicted;
9. The District Court erred in the admission of evidence illegally seized, in violation of the Fourth and Fifth Amendments to the Constitution of the United States;
10. The District Court erred in failing to direct the verdict for Appellant;

11. The District Court erred in failing to arrest the judgment.

BENJAMIN ROSE

Appellant

BENJAMIN J. GOODMAN

Attorney for Appellant

Received copy of the within this 25th day of May, 1943.

LEO V. SILVERSTEIN,

U. S. Atty.

Attorney for Plaintiff

HM

[Endorsed]: Filed May 25, 1943. [29]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant:

Louis Vitagliano
228 Raymond Ave.,
Glendale, California

Name and Address of Attorney for Appellant:

Paul Angelillo,
208 South Pasadena,
Los Angeles, Calif.

Offense: U. S. Code

Title 18

Section 88

Date of Judgment: May 24, 1943.

Brief Description of Judgments and Sentences:

Six months in the Los Angeles County Jail and One Thousand (\$1,000) Dollars fine.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgments and sentences above mentioned on the grounds set forth below.

Pursuant to Rule V, I hereby serve notice that I elect [30] not to enter upon the service of the sentence, pending appeal and that the judgments and sentences be stayed pending the appeal.

Dated, Los Angeles, California, May 25, 1943.

LOUIS VITAGLIANO

Appellant

PAUL ANGELILLO

Attorney for Appellant

Grounds of Appeal:

1. The Indictment is in violation of the Sixth Amendment to the Constitution of the United States, in failing to inform the accused of the nature and cause of the accusation;
2. The Indictment is in violation of the due process of law guaranteed by the Fifth Amendment to the Constitution of the United States;
3. The Indictment fails to state a public offense;
4. The District Court erred in refusing a Bill of Particulars;
5. The District Court erred in over-ruling the demurrer to the Indictment, the Indictment is vague, indefinite and uncertain;

6. The Appellant was denied due process of law guaranteed by the Fifth Amendment to the Constitution of the United States in the procedure and proceedings of the case;

7. The Indictment also charges two offenses of the same [31] character;

8. The verdicts are contrary to the law and evidence; the evidence shows the appellant to be innocent of the crime of which he was convicted;

9. The District Court erred in the admission of evidence illegally seized in violation of the *Court* and Fifth Amendments to the Constitution of the United States;

10. The District Court erred in failing to direct the verdict for Appellant;

11. The District Court erred in failing to arrest the judgment.

LOUIS VITAGLIANO

Appellant

PAUL ANGELILLO

Attorney for Appellant

Rec'd copy of the within this 25th day of May,
1943.

LEO V. SILVERSTEIN

United States Attorney

HM

[Endorsed]: Filed May 25, 1943. [32]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed that the appeals of Benjamin Rose and Louis Vitagliano from the judgment of the Honorable Benjamin Harrison, entered May 24, 1943, may be tried together, and that one Bill of Exceptions be filed for both of said appellants and one number given the case.

LEO V. SILVERSTEIN

United States District

Attorney

BENJAMIN J. GOODMAN

Attorney for Appellant :

Benjamin Rose

.....

Attorney for Appellant

Louis Vitagliano

ORDER

Good cause appearing for the foregoing stipulation, it is ordered that the appeals of Benjamin Rose and Louis Vitagliano, from the judgment entered on May 24, 1943 may be tried together and that one Bill of Exceptions be filed for both said Appellants, and one number be given this case.

Dated this 25 day of May, 1943.

HARRISON

Judge—District Court [33]

On or about the 3rd day of May, 1943, the date set for trial of this cause, defendant Rose was brought

into court in the presence of the jury panel by two Coast Guardsmen. He was using crutches at the time. Mr. Goodman, attorney for Mr. Rose, then asked Mr. Norcop to step into Judge Harrison's chambers with him. Mr. Norcop and Mr. Goodman entered the Judge's chambers. Mr. Goodman then stated to the Judge as follows: That on May 1, 1943, Mr. Rose had sent a telegram to Mr. Goodman advising him that he had been injured in an accident and that he was physically unfit and unable to proceed with the trial and had instructed Mr. Goodman to request a continuance of the case, that Mr. Goodman, by telephone, communicated with Assistant United States Attorney Norcop on the same day and advised Mr. Norcop of the contents of said telegram, that Mr. Norcop had stated to Mr. Goodman that he would oppose a continuance for the reason that the United States Attorney's office was ready to proceed with the trial and had subpoenaed witnesses who were coming from outside California, but that he would communicate with the Coast Guard base and ascertain the extent of the injuries suffered by Mr. Rose and would later advise Mr. Goodman; 30 minutes later Mr. Norcop called Mr. Goodman and stated that he had contacted the doctors at the Coast Guard base, that it appeared to him that Mr. Rose had not been seriously injured and that he was feigning or exaggerating the injury and that he would communicate the data to Judge Harrison and insist upon the case going to trial on May 3, 1943. Mr. Goodman then stated to Judge Harrison that Mr. Rose had been brought to the courtroom by

Naval Policemen in the presence of the jury panel and that they were constantly with him and that he could not converse with his client in the presence of Naval Policemen and would have [34] no opportunity of private consultation with his client if the Naval Policemen continued to keep Mr. Rose in their custody. Mr. Norcop then stated to Judge Harrison that he had telephoned the Coast Guard base the preceding Saturday after Mr. Goodman had informed him that the defendant, Mr. Rose, was hospitalized and had inquired concerning the extent of the injury to Mr. Rose, that he had spoken to two of the doctors at the Coast Guard infirmary where Mr. Rose was a patient and that they had informed him that in their opinion Mr. Rose was in reality feigning or greatly exaggerating, that his attendance at the trial would not endanger his health, that Mr. Norcop had requested the doctor who was the officer in command of the infirmary in which the defendant, Mr. Rose, was a patient either to discharge Mr. Rose as a patient to enable him to attend court or to arrange for Mr. Rose's transportation to and from court during the trial, that the commanding officer of the infirmary had stated that he would not discharge Mr. Rose as a patient, but would have him transported to court in the company of competent medical corp attendants from the infirmary so as to enable Mr. Rose to attend the trial and to have competent hospital attention if needed. Judge Harrison then stated that he saw no reason why Coast Guardsmen would be required in immediate attendance upon Mr. Rose and that Mr. Rose

should have the opportunity to consult with his attorney privately. Judge Harrison then stated that the Coast Guardsmen should release Mr. Rose and he called the Coast Guardsmen into chambers and so directed them. Mr. Goodman then stated that in view of Mr. Rose's leg injury the case should be continued until he recovered because according to what Mr. Rose told Mr. Goodman the doctor advised him to stay off his leg, that Mr. Norcop stated that he would oppose any [34-a] continuance and Judge Harrison stated that Mr. Rose was present and didn't appear to be so incapacitated that he could not proceed to trial, and said that the trial should proceed. The proceedings in chambers then concluded, the parties returned to the courtroom, the case was called for trial in open court, whereupon a jury of twelve and one alternate was regularly empanelled and duly sworn to try the case. Said jury was drawn from the panel present in court when Mr. Rose was brought into court by the Coast Guardsmen.

On May 4, 1943, at the morning recess Mr. Goodman and Mr. Norcop stepped into the chambers of Judge Harrison. At that time Mr. Goodman stated to Judge Harrison as follows: that he had had a doctor from the United States Health Service examine Mr. Rose's leg at 9 a.m. and that the doctor had informed Mr. Goodman that Mr. Rose's leg was swollen and that he should go back to the United States Coast Guard base and stay off his leg for several days and that a doctor was available for a

statement as he was outside of the courtroom. Judge Harrison ordered the doctor into chambers. The doctor and two other doctors from the United States Coast Guard infirmary entered the chambers and in the presence of Judge Harrison, Mr. Norcop and Mr. Goodman, defendant Rose was examined by the doctors. All doctors stated that Mr. Rose's leg was injured and swollen and that he should keep the weight of his body off the leg. Some one present, other than Mr. Rose and his counsel, suggested that Mr. Rose's leg be propped up. Judge Harrison then suggested that a chair could be arranged. The above mentioned parties then left the chambers and returned to the courtroom. A chair was set up in the courtroom in a position so as to enable Mr. Rose to have his leg placed thereon and kept level and in [34-b] which position his leg was kept throughout the trial, except when the court was in recess.

[35]

Mr. Norcop: At this time, if the court please, we move in behalf of the Government to dismiss the indictment against the defendant Phil Rezniche, there not being sufficient evidence to connect him with this enterprise, and that his bond be exonerated and he is free to go.

The Court: That will be the order.

(In absence of the jury:)

Mr. Goodman: First, your Honor, I would like counsel for the Government to stipulate that when any objection is made on behalf of any defendant, that it may be deemed to be made on behalf of all

the defendants, without counsel having to join in on each objection, unless there is an exception made at the time of the objection by one of counsel. They may not want to join it. That would save a lot of time in the record and a lot of objections from all counsel on one question.

The Court: The court will consider any objection made by any one of the counsel for defendants as an objection by all. . . . An exception taken by one will be deemed taken by all.

Mr. Goodman: In reference to my motion, your Honor, at this time I move the court to compel the Government counsel to elect upon which count of the indictment they will rely; and I base my motion upon the following grounds: [36]

The first count alleges a conspiracy to commit offenses against the United States Government and the second one alleges a conspiracy to defraud the United States Government in the lawful functions of several of its agencies. Both counts allege the same conspiracy. Each count contains the identical combination of conspiracies. The conspiracies charged begin at the same time and end at the same time. The conspiracies consist of the same combination and charge the same acts; in fact, the second count incorporates by reference some of the overt acts from the first count.

There cannot be two convictions in this case on both counts, and both counts charge the same conspiracy to commit more than one offense, and the fact that they may have committed a dozen offenses

would not change the situation any and the fact that they had violated a dozen statutes would not make any difference. It is the conspiracy which is the gravamen of the action and which is the offense being punished. (Citing *Braverman v. United States*) (Volume 87, No. 2, page 83, L. Ed. Advance Opinions)

(Argument follows.)

Mr. Norcop: In answer to counsel's argument in that respect, if the Court please, in that case, as the decision holds, the United States stipulated at the trial, the Government stipulated at the trial, that there was but one agreement, and counsel is correct in his recitation of the decision, but in our case here we have two separate and distinct offenses. [37]

The Court: Gentlemen, at this stage of the game I am going to deny the motion, and study this case further.

Mr. Shippee: May the record show that all the defendants join in this motion?

The Court: Yes, the record will show that all the defendants join, and an exception will be noted.

(At this point the jurors were called back.)

(Mr. Norcop here makes opening statement to the jury, as follows:)

Mr. Norcop: If the court please, and gentlemen, at the outset it is the estimate of the Government that it will take us about six or seven working days to present the testimony of the witnesses, of course, subject to the rulings of the court as we go along.

You have already understood that this is an indictment for two separate conspiracies, which the court has outlined to you. The first count alleges a conspiracy on the part of these six defendants to violate the tire rationing regulation, by attempting to conspire to sell to consumers, that is, the ultimate users, tires, without certificates obtained from the the tire rationing board.

The second count is a different one entirely, but is a conspiracy alleged against these same six men to obstruct and defeat the tire rationing program. There are what we call overt acts alleged in each of these counts; that is, actions that the court read off to you, that occurred on the date that he mentioned. The crime of conspiracy I won't read [38] to you, because it has already been outlined to you by the court in his opening statements, and the reading of the indictment.

The facts as they will be developed here commenced in the month of May of last year, 1942, the first transaction being a sale by the first witness who will appear here in the case, Mr. Novisoff to the defendant Phil Taplin of his entire stock of new tires and tubes, and the delivery to a place on a Sunday morning early. The defendant Weinstein was there with Mr. Taplin, to accept delivery, and the stock of tires and tubes were loaded into two rented vans, rented from the National-U-Drive Truck Service. Those vans, loaded and locked, proceeded to 12th and Sanford Streets, which was a gasoline station owned by the defendant Louis Vitagliano. They were there seen by witnesses, who

will appear, and when one of them, a police officer, questioned Mr. Vitagliano as to who owned these tires, he told him Mr. Taplin. Mr. Taplin was called over, and he exhibited to the inquiring officer a bill of sale received for them.

Then the tires moved, a day or so afterwards, on trucks to a point near 4th and Alameda, across the street from the Bekins Van & Storage warehouse, where, the testimony will show, two of the men, Taplin, and one of the others, went over across the street to Bekins Van & Storage, and asked if they could store these tires in there. They were told by a man they approached there that they could, except [39] they would be "frozen." The trucks stayed across the street unattended the rest of the day. Late that evening they were removed to another location close to 12th and Stanford, at which point they remained overnight, or perhaps a couple of nights, and they were taken, by the persons I have mentioned, the trucks being rented driverless—the person renting the trucks driving them himself—and they drove over to 3200 City Terrace. That was near the Evergreen Cemetery. There they were stored in a building that might have been a tire shop in the back of a gasoline station. They remained there from the end of May until the following September, a period of about four months, when they were moved from there, and were removed by a separate set of trucks, rented by the defendant Benjamin Rose from a trucking concern out in Hollywood.

He directed the truck drivers where to proceed—not the address, but to a street intersection, and there he met them, and the trucks separated. Phil Taplin was there, and Rose, and the other defendants, and they loaded the tires in one of the trucks, and proceeded to 3300 West Washington Street, which was the Arlington Van & Storage Co. building. There they made arrangements to store the tires, not on Washington, but in an intersecting warehouse in what they call “Set-off” space, taking the tires off of the trucks and putting them in the warehouse.

The second truck was taken by the man who owned the [40] truck out on Hollywood and Sunset, near Bronson, Rose having previously rented a little garage, one of these garages with a building in the back, on a one-month's basis, for a given sum of money.

The tires were all unloaded there from the second truck. No record has been shown since of the disposition of those tires, except a witness will be produced here who will testify as to some of the goings on and happenings with respect to those tires, and the defendant Rose, at that place, at Sunset and Bronson.

The testimony will show that all trace was lost of the tires stored at 3300 Washington, on this side street. We have no record as to where they went, or what happened to them thereafter. You might call that Chapter A.

The next transaction is in the month of July, about the 21st of July, when Ben Rose bought the

entire stock of one Mike Kreling, here in Los Angeles, about 48 new tires and 130 new tubes, getting an invoice for them. We can't tell you where they went, but when Mr. Rose was interviewed by one of the witnesses who will testify, he stated that these tires had been sold to the Golden State Lubricants, a concern that had a gasoline station in Los Angeles, and particularly that one Joe Munn had signed for them for the Golden State Lubricants. We will bring in testimony to show that was an entirely fictitious sale; that no such sale took place, and the company was out of business at [41] that location, and that there was no Joe Munn ever employed by the company.

On August 1, 1942, Mr. Rose rented a storeroom from the Bank of America at 613 North Virgil Street, property that has been on one side a gas pump or station, and a little room in back, not visible from the front of the street, not any bigger than from the witness chair to the box here.

The next day he got the same person from Hollywood, who had rented him the two trucks, to go out to Ontario, on a Sunday, where he had purchased the entire stock of tires and new tubes of one Mr. Sam Kelher. Those two trucks loaded with tubes and tires, or vans, came into this location at 613 North Virgil, and the tires were unloaded, and placed in that place, which had not been a tire warehouse or dispensary.

Thereafter, about 10 days after that, the same van man was employed by Mr. Rose to go to Pasadena, where a van load of new tires, and new tubes, were

purchased from a man by the name of Reuben Slovet, and a bill of sale given, and that van of tires was likewise driven to 613 North Virgil.

The testimony will show that some of the witnesses around the place at that time noticed two previous truckloads had disappeared; they were practically all gone before the truckload was placed in there.

I neglected to say in regard to the first purchase, which took place in May—it comes in properly now—about [42] that time, or shortly after, they were moved from over on the east side to the two locations I told you about. Mr. Taplin told one of the witnesses that he had made a sale of these tires to the Golden State Lubricants, to another defendant in this case, Mr. Mac R. Brown, and that was the invoice furnished to our witness at that time.

Along the way there was another transaction, where a Mr. Parsner, in business here down about Washington, off of Main Street, sold his new tires and tubes to the defendant, Mr. Mac R. Brown. In that connection the testimony will show that diligent inquiry was made by both Mr. and Mrs. Parsner, as to who owned the tires, and whether Mr. Brown was legitimately in the filling station business, which he said he was, and where he was located, and they will testify that it developed that he was a lessee, or under contract, with the Signal Oil Company, and had a station at 2428 Sunset Boulevard. So they made the sale of their tires to him. Later, when Mr. Brown was interrogated about the transaction, and what disposition, if any, he had made of these

tires, he said he had sold them, but did not have at that time an invoice, but could get one. On the following day he gave one to one of our witnesses, who said that these same Parsner tires had been sold to the "T & M Tire Service" which had been in business at 1610 South Main Street. The testimony will develop that this place of business had been out of business for months; that there was no such business. [43] That is the vanishing point of that group of tires.

The testimony will show that on the 25th of September, Sam Weinstein, after considerable negotiation with a man by the name of Bill Soukesian, on North Broadway, just a few blocks from here, purchased their entire stock of new tires and tubes, and they were delivered by a Hertz-U-Drive truck which truck had been rented by Mac Brown and others who were with him, including, the evidence will show, Louis Vitagliano, to transport these tires from North Broadway.

Mr. Brown, and the others with him, took Mr. Soukesian to his truck over to his place of business on Sunset Boulevard, previously mentioned, to 2824 Sunest Boulevard. Only one truckload was taken the first day, and the next day, September 26, two trucks were taken.

Meanwhile, Soukesian wanted to satisfy himself that there was such a place, and he went there and found that there was such a station under the name Mr. Brown had given him, and then, as I say, already two of the truckloads had been delivered.

In the Meantime Mr. Brown told Soukesian that

he wanted to take six tires and one new tube immediately in his passenger car, because he had certificates for them, and he wanted to make immediate delivery. Among other things, Brown and Weinstein told Soukesian that the reason, when he asked them specifically how they could handle such a large quantity of new automobile tires and tubes, when he [44] did not have the necessary certificates of certificate holders, Brown told him he had a large string of defense plants, and he had stocked up certificates, and they wouldn't last him 30 days, and he could dispose of them in that manner through defense workers.

In the matter had in the transaction at Ontario, Mr. Weinstein was the man who made the arrangement between the seller and Rose, the purported purchaser. The same thing was true in Pasadena, Weinstein was the one who brought the seller and Rose together.

In the last transaction I am going to mention to you now, about the end of August, over in front of or to the side of the Knights of Pythias Building, at 16th and Venice they call it now—we used to call it “16th”—just west of Figueroa Street is the Knights of Pythias Building, and the testimony will show that on the 27th, or thereabouts, of August of last year and before, a long time previous to that, Mr. Joseph Lieb, whose name has not been mentioned up to now, one of the defendants, had a cigar factory on the ground floor in the front room of that building. The testimony will show that he had been observed rolling tires and tubes out of his place and down the street for delivery into a truck

about two or three weeks before the date I just mentioned; that on the date I just mentioned, Ben Rose and Ben Rose's brother, Dave, who is not a defendant here, and Lieb, had cars at the front of the lot alongside of this [45] building and Lieb was seen, from persons in the building, participating in a transaction with reference to tubes or tires and was seen to pass money from himself to one of the other persons mentioned. Thereafter the party went to the rear of the lot and the second deal took place with respect to the same tires or tubes, I should say, and a witness in the building counted them, the number of rubber articles that were passed from one car to the other in the rear of the lot, all of this taking a period of time, perhaps two or three hours; and after that, Mr. Lieb went to this witness and asked if she had seen the transaction and she said that she had; and he asked her, further, if she had reported it and she said she had not.

I have not mentioned so specifically here in the recitation of the facts Louis Vitagliano, but, as the testimony develops, I think it will show to you that he is not so much on the front, with his name being used as a salesman or a buyer, but at the scene when all the deliveries were made through this period of conspiracy, as we claim, from early in May until the end of October or thereabouts.

And we will try to be expeditious in the presentation of these facts in this case, but will ask you to bear with us as we go along so they can be made clear to you. I haven't by any means given you

all of the details that will be revealed to you, and after that testimony has been completed it will be our claim that, very clearly, beyond a [46] reasonable doubt, we have established a conspiracy under the first count to commit an offense against the United States, that is, violate the revised tire rationing regulation by conspiring and arranging to to make sales to consumers. If we had sales to actual consumers it would not be a conspiracy; we would have the actual selling. Our case is a conspiracy case.

On the second count we claim that these men—and the evidence will be largely the same, but a different agreement—we claim was in the second conspiracy, and that was to conspire to defraud the United States by obstructing, impairing, and defeating its legitimate function of tire rationing through its regulations and through the rationing boards. And if to your satisfaction we present all the evidence which will be on that, we will ask for your verdict.

(Whereupon the jury were excused from the court room and the following proceedings were had in their absence:)

(Mr. Sullivan states Defendants' desire to make a motion.)

Mr. Norcop: Before the motions are made, I should inform the court, I think properly at this time, that the Federal Register Act, which was passed in 1935, provides, in Section 7 thereof, the Act commencing at 49 Statutes 52 as follows: "The contents of the Federal Register shall be judicially

noticed and without prejudice to any other mode of citation may be cited by volume and page number." And [47] therefore, the documents that they may be wanting to discuss in their motions are properly, under that authority, taken judicial notice of it they have actually been published in the Register.

Mr. Sullivan: The motion which we have in mind is, and we move your Honor to do so, to dismiss both count 1 and count 2 of the indictment, or, in the alternative, to instruct the jury to render a verdict of not guilty or acquittal based upon the opening statement of Government counsel. The opening statement of Government counsel as to what they intend to and are going to prove to show a conspiracy under either count 1 or count 2 are all matters and things which, neither in and of themselves, nor collectively, constituting conspiracy.

The Court: I am going to permit the counsel for the Government to add to their opening statement a statement in substance and effect that they expect to prove all of the allegations of the indictment, which will correct any discrepancy in that respect.

Mr. Sullivan: May we have at this point, then, your Honor, an exception to the Court's allowing the Government to reopen their statement and denying our motion?

The Court: You may have an exception.

Mr. Goodman: May the record show that all counsel join in this motion?

The Court: It is understood that the motion is made [48] on behalf of all the defendants and exception noted on behalf of all.

That is going to be the court's ruling. I noticed in the opening statement that the Government only stated a few facts; and I am going to give the Government an opportunity if they so desire, to make a further opening statement and whether or not they expect to prove all the allegations of the indictment.

Mr. Sullivan: Your Honor will notice that all of the overt acts that are alleged in the indictment as overt acts are ones dealing with transportation. Counsel for the Government in his opening statement to the jury has stated that at various times rubber tires were transported from one place to another, or were seen in the act of being transported and after these individual transportation acts, he states, to use his words, "that the tires from then on vanished; that they were no more to be found by the Office of Price Administration. The Office of Price Administration regulations, or the rationing regulations, provide on the transfer by a retailer, which he stated in this case happened to be individuals involved in filling stations: "Any retailer may, without certificate, transfer any new tire or tube to any retailer, distributor, wholesaler or manufacturer." It is specifically provided in the Act.

Then, by a distributor: "That any distributor may, without certificate, transfer any new tire or tube to any [49] wholesaler or manufacturer." The same with reference to a wholesaler: "may transfer to any other wholesaler or manufacturer without certificate."

By a wholesaler: "Any wholesaler may, without certificate, transfer any new tire or tube to any manufacturer."

Then, records: "Any person making a transfer pursuant to paragraphs 1, 2 and 3"—which I have just read——

The Court: That is, in effect, that the transfers have to be made to a consumer, isn't it?

Mr. Sullivan: Well, that is right.

Mr. Goodman: In order to make out a case for the Government they have to prove sales to consumers.

The Court: They are not charged with a substantive offense. They are charged with conspiracy, that that was the intent and object of the conspiracy, and whether they actually did it or not would be material.

Mr. Sullivan: Counsel for the Government has stated that there are no substantive offenses that they are going to nor can they prove.

The Court: Under conspiracy they do not have to prove a substantive offense. If they can prove that there was a combination here, the conspiracy was for that purpose, the crime was complete whether they have sold any to a user or not, an ultimate user.

Mr. Sullivan: That is correct. I think that probably counsel rather confused you with what we had in [50] mind. It is not that we know, and the Government knows probably whether or not we do, that there are no substantive acts of selling to a consumer, and they can indict on that.

The Court: I do not know what they can prove.

Mr. Sullivan: That agreement that they contend, and which it is our contention that they did not express to the jury, in this sense: If they had told the jury in the opening statement that tires were, on such and such a date, transported to such and such a place and an ad was run in the newspaper to consumers to come and buy their tires there, and we will make a deal to you to avoid having a certificate, that would have been an indication of what was going to go on. But here, the bald statement of counsel for the Government to the jury is simply that they can prove the acts of transportation and that the tires vanished from their sight by reason of this transportation. Now, whether or not, even if you take it as a whole, your Honor, if that is a sufficient indication of an agreement to conspire to violate the laws of the United States——

The Court: May I ask, Mr. Norcop, is it your understanding and your contention that you are going to offer evidence that would tend to establish the fact that these people were handling tires for the purpose of placing them in the hands of the users?

Mr. Norcop: Yes, your Honor.

The Court: And you are not in conflict with the de- [51] fendants in so far as the provisions of the Act is concerned in that regard?

Mr. Norcop: Oh, no. No. If there was just an agreement to transfer from one dealer to another and that ended the entire matter, we would not be

in court; and we do not end there in our allegations in the indictment.

The Court: I know, but you did in your opening statement.

Mr. Norcop: Then, if I did, I will supplement it and I will say at this time, if the Court please, we are not always compelled to disclose every detail of our testimony in the opening statement.

The Court: You do not have to make one, so far as that is concerned; and if you make one, you can get up and state in substance that you expected to prove all of the allegations of the indictment and you have made a completed statement.

Mr. Norcop: I should have made it in that form, but I do want to say this to the Court so that the Court, out of the presence of the jury, will have a little more idea of what is coming throughout the case.

The Court: I just asked you the question: It is your intention to introduce evidence that will tend to show that the conspiracy here was to ultimately get these tires into the hands of users?

Mr. Norcop: Yes. [25]

The Court: Without complying with the regulations?

Mr. Norcop: Yes, your Honor; and we will have a number of instances of it.

Mr. Sullivan: If those matters and things were incorporated in the statement to the jury, then our motion would obviously be out of order.

The Court: I am glad to have it, because you are in accord, as I understand it, that the agreement

that it is incumbent upon the part of the Government to prove is that these people, by concert of action, intended that the tires would ultimately reach the user.

Mr. Sullivan: Would get into the hands of the consumers. Yes, your Honor; we are in agreement along that line. In so far as our motion is concerned, as I told your Honor, it was made for that purpose and also for the purpose of keeping the Government confined to the proof of the corpus delicti before it starts to connect these defendants up.

The Court: Of course, you realize that a conspiracy indictment is very broad and the Court can't tell a great deal about what things may tend to prove until we get down toward the end of the Government's case.

Mr. Sullivan: That is quite true, your Honor, but, at the same time, because of the nature of the indictment, you see, we were not—while we did make a motion for a bill of particulars, we were not furnished one, that is, the Court denied us the right to have a bill of particulars [53] and because of that we are left somewhat up in the air as to just where we stand with reference to what the Government is driving at, because in all of its overt acts, strangely, they all go to the transportation of tires.

The Court: Of course, the overt acts do not necessarily have to allege an offense.

Mr. Sullivan: No; that is quite true.

The Court: An overt act may on its face appear

absolutely innocent and yet be an act in furtherance of a conspiracy.

Mr. Sullivan: That is quite true, but outside of just the use of the words "still in contravention of the United States statutes" and that kind of a case, there is nothing in the indictment to even hint at what part of the great bulk of legislation concerning the office of the Price Administration these defendants are on trial for violating; and that is the purpose of our motion, to get this thing cleared up so that your Honor understands us and we understand counsel for the Government and counsel for the Government understands where we stand in the picture.

The Court: So far there does not seem to be much of a disagreement.

Mr. Sullivan: If our motion has accomplished that and to indicate to your Honor the position of the defendants——

The Court: While not any too familiar with the regulation, it is my understanding that the charge involves the [54] transfer of tires to a user.

Mr. Goodman: Your Honor, may I supplement Mr. Sullivan's statement with this observation? Your Honor might be interested in it. A similar case was tried in this district before another Court, a motion was made requiring the Government to elect on which count to stand, the same as the Braverman case, at the commencement of the trial, and the trial Court ultimately ruled upon it, and at the conclusion of the Government's case required the Government to elect at that time, which the

Government did. In that case the Government elected to stand on count 2, which was a fraud count, the same as ours. The original count, count 1, was dismissed for the reason that, prior to March 27, 1942, which was the date the Second War Powers Act was enacted, we had no penal provisions in our statute punishing the violation of any of these rules, regulations and directives. So that in that case, under count 1 there had been no offenses committed against the United States Government.

The Court: The first overt act here——

Mr. Goodman: Yes, I am making that observation. We do not have that in our case. In other words, the Second War Powers Act went into effect on March 2, 1942, and there were no penal provisions in full force and effect during the time the overt acts were committed, but when they relied on the second count then objection was made to proceeding on that count, because it did not state facts sufficient to [55] constitute a public offense. Counsel for the defendants relies upon the case of *Hammerschmidt v. United States*, reported in 265 U. S. 182, decided May 26, 1924. Judge Hollzer, of the trial court, ultimately had ruled upon that motion, and determined that the second count of the indictment was insufficient because it failed to allege facts showing how, when and where functions of Government were overreached by trickery, dishonesty, or any other device.

The Court: Are you making the argument that

the Government can't fall back on count 1 instead of count 2?

Mr. Goodman: I am coming to this point. After that was ruled on, and the second count ultimately dismissed, Government's counsel in this case dismissed the first indictment against the defendants, and had a new indictment brought in, in which they attempted to rectify the deficiency in count 2, which they ran into in this previous case. That rectification is the addition of the language in count 2, commencing with line 11, on page 6 of the indictment, and ending with the word "certificates" on line 19. That portion was added to the second count as distinguished from as it read on the return of the first indictment.

The Court: May I ask, was this question raised before Judge Yankwich?

Mr. Goodman: Yes.

The Court: On the demurrer to the indictment?

Mr. Goodman: Yes. [56]

The Court: He overruled it?

Mr. Goodman: That's right.

The Court: That is the law of the case, so far as we are concerned here.

Mr. Goodman: The only purpose in my observation was to bring home to the Court the fact that so far as the defendants' position is concerned now, we stood on the position that count 2 of the indictment still fails to state facts sufficient to constitute a public offense.

The Court: You have your record protected on the demurrer. I might state, on the question of

election, as I have advised counsel informally, if the Government does not prove more than one agreement, then at the end of the Government's case the Court will require an election. What do you want to do about your opening statement?

Mr. Norcop: I would like to supplement it, your Honor; amend it by making a few brief additions.

The Court: Very well. Any objection?

Mr. Goodman: May I protect the record: To which the defendants object on the ground that there is no right on the part of counsel now to amend his opening statement, and that it is not within the discretion of the Court that he should be allowed at this time to amend his statement to the jury.

The Court: Counsel, we don't try criminal cases on technicalities any more. We are going to try this case on its merits. Objection overruled and an exception noted. [57]

(Jury present.)

The Court: Mr. Norcop's application for an opportunity to supplement his opening statement is granted.

(Mr. Norcop adds to his opening statement, as follows:)

Mr. Norcop: Just a few words further, if the Court please, which I omitted before noon, this morning.

We intend to prove, gentlemen, each and every allegation of every part of this indictment, which was gone into fully this morning by the court, and

which will be called again to your attention before the case is submitted to you, including specifically, we will prove that there was an agreement between these six defendants to have new tires reach the hands of ultimate consumers, in violation of the revised tire rationing regulations, and in that connection, specifically, we will bring on a witness who will testify that the defendant Rose made him a specific offer of a certain number of tires, at a certain date, at a certain price.

We will bring in another witness who will testify that he purchased from the defendant Rose, pursuant to this conspiracy, at another place, another time, a large batch of new inner tubes, in violation of the regulations, because no rationing certificates were had by the purchasers.

We will prove solicitations by one or more of the defendants to do the same thing. We will prove, in addition, that on one occasion the defendant Rose stated to two different witnesses, who will appear here, that the [58] price of those tubes, to be bought without a rationing certificate was an average price of \$12.50 each for a new tube; and we will show that Mr. Rose frequently went to that warehouse I referred to, behind Randall's insurance office on Sunset, that he had rented, and in his personal automobile took away, a few at a time, new tires and new tubes from that place. One witness looked in on one occasion, when the door was open, and saw how many of the rest were remaining. The testi-

mony will show that they were practically all gone on that occasion, and this all occurred within a very short period of time.

That is the only additional statement I desire to make, if the court please. [59]

HENRY NOVISOFF

called as a witness by and on behalf of the Government, having been first duly sworn, testified as follows:

My name is Henry Novisoff.

Mr. Norcop: Before I interrogate Mr. Novisoff, under the authority of the Federal Register Act, 1940 Statutes, 500, I now ask to have marked for identification 11 booklets that are the publications in the Federal Register, of the matters mentioned in the first 12 counts of the indictment.

The Court: The first 12 paragraphs?

Mr. Norcop: The first 12 paragraphs.

The Court: Is there any objection why they can't be admitted in evidence, and have it over with?

Mr. Goodman: That is agreeable.

The Court: Any objection, gentlemen?

Mr. Goodman: I think it is a matter which the court will take judicial notice of.

The Court: They may want to refer to them.

Mr. Goodman: That is all right.

(Testimony of Henry Novisoff.)

Direct Examination

My business in May, 1942, was automobile tires; retreading, new tires. I was in business at 1161 South Main. I had been in business there 16 years under the name of Perfect-Made Tire Company.

I know the defendant Phil Taplin. I have had an acquaintance with him about six years. I had a conversation [60] with him in May of last year. I telephoned him. Somebody told me he was in the market for retreading molds, of which we had two we wasn't using, so I called him up and said "I got two retreading molds"——

Mr. Goodman: I object to the introduction of any evidence of conversations between this witness and Mr. Taplin, unless the corpus delicti is proved, or unless the defendant Rose is connected up with this alleged conversation, unless the testimony goes in with a reservation to later move to strike out the testimony unless it is connected up with a conspiracy.

The Court: Let us have an understanding now, gentlemen, and it will save a lot of strain on your voice, and a lot of overruling of objections. May it be stipulated that the evidence introduced will be subject to a motion to strike unless it is connected, and that will apply to each defendant, and will be received under that understanding? [60-a]

Mr. Norcop: Yes.

Mr. Goodman: We accept the stipulation of Government counsel.

(Testimony of Henry Novisoff.)

(By the witness):

So I called him up and asked him if he was in the market for two retreading molds, and he said, "At the present time I am not, but I am in the market for new tires and new tubes." I said, "I don't think I can sell you new tires and new tubes." He said, "You can." So the next day, or two days later, I don't remember the day exactly, he came and showed me the rationing regulation where a retail dealer can sell to another retail dealer without a certificate. I wasn't satisfied with that. I called D'Orr's secretary, whose name is Mr. Johnson, and asked him if they could be sold to another dealer, tires and tubes, and he said, "If he has a resale number and he is a legitimate tire dealer you absolutely can sell them, but to play safe," he said, "he should have a letter notarized that he is 50 per cent wholesale and 50 per cent retail, and by presenting to you a certificate of resale number and notarizing this paper you are absolutely playing safe to sell him those tires."

Then I saw Mr. Taplin at my place of business following that. I talked to him and explained to him if he signs this letter that he is 50 per cent wholesale and 50 per cent retail I would be able to sell to him; that I had talked to Mr. Johnson, secretary to Mr. D'Orr. Mr. Sam Weinstein, whom he recognizes here in court sitting on the end of the row, came [61] with him when he came to negotiate with me. He was present when the talk occurred between Mr. Taplin and me about

(Testimony of Henry Novisoff.)

purchasing my tires. That was all that was said. I told them what they would have to do in order to sell the tires. We went upstairs and typed a letter to the best of our knowledge, and went across the street and notarized it; Phil Taplin signed it, and then gave me a deposit on that date, and Sunday they picked up the tires. He made a deposit of \$150 in cash. The total price agreed upon for my new tires and tubes was \$4,800.00. I was paid the balance with a certified check. If I recollect, it was the California Bank, signed by—the check was signed by Phil Taplin. I was paid in advance of delivery of the merchandise. He did not say anything about when delivery should take place, but Saturday, if I recollect, he said, “That is my busy day; I cannot come down, so if you don’t mind if I take Sunday, your store will not be busy and so mine isn’t, I will take delivery Sunday.” That was convenient to us, because we are not open on Sunday, so he sent Mr. Weinstein for the tires. He did not come himself. After I had already received my full purchase price Weinstein came over Sunday to accept delivery. It was in the morning between 9:00 and 10:00 o’clock. I was there. Besides Weinstein and I my son was there, and another of my employees. The vehicles brought to load the tires in were closed trucks. As to who was driving those vehicles, I think Mr. Weinstein, if I remember right, and another fellow with [62] him, but I don’t recollect

(Testimony of Henry Novisoff.)

his name; I don't know the other fellow at all. I do not see him in the court room here. There were only two men, one for each truck, one driving each truck. Taplin himself was not there. It took a couple of hours to load the tires.

Mr. Sullivan: We stipulate that the document just shown us may go into evidence.

(By the Witness):

That's the document that I had referred to a moment ago, that Mr. Taplin gave me.

(The document referred to was received in evidence and marked Government's Exhibit No. 2.)

Mr. Norcop: This is on the stationery of the Perfect-Made Tire Co. H. J. Novisoff, Mgr., 1161 South Main Street, Los Angeles, California. May 22, 1942.

I, Phil Taplin, located at 3412 Winter Street, Los Angeles, for the last five years, handling new, used and retread tires, have an average of 50% retail sales. My retail tax permit number is AA-6264.

Signed: Phil Taplin.

Witness: G. Metzger.

Subscribed and sworn to before me this 22nd day of May, 1942. Ada L. Sack, Notary Public in and for County of Los Angeles.

And seal. [63]

(By the witness:)

I gave Mr. Taplin or Mr. Weinstein an invoice for this merchandise.

(Testimony of Henry Novisoff.)

(Mr. Norcop produces a pink sheet.)

(By the witness:)

That is the invoice I am referring to. These other six or seven sheets are new tires and new tubes. This is an itemization of the summation that appears on the pink sheets. I did not have a talk with Taplin after the tires were taken away. The next day or so he came to me, and he bought some more tires on the 25th; 14 tires. He came to me, and I said, "How the dickens can you sell tires? We have only sold a few tires. I don't understand how you can dispose of them. You cannot sell them, because of rationing. We have only sold a very few." And he pointed out to me that Weinstein was connected with a lot of physicians and surgeons who were entitled to new tires. Doctors, and that through him he sold these tires to doctors with certificates. That's the answer he gave me. That's the way he disposed of them.

As to how many tires I sold to Taplin on this day, Monday, I have the record here. I have 14 tires.

Mr. Norcop: We will offer them as one exhibit, that invoice, and the supporting sheets.

The Clerk. No. 3.

Mr. Norcop: We now offer in evidence the last invoice just referred to, of the sale on the 25th. [64]

The Clerk: No. 4, the last one.

(By the witness:)

I sold my entire stock of new tires and tubes to

(Testimony of Henry Novisoff.)

Mr. Taplin, as represented by this \$4800.00 invoice, except blemished tires they wouldn't buy. I had blemished tires that had been in fire, and they wouldn't buy them. Everything else went to them.

(Photostat of certified check offered in place of original.)

(The document referred to was received in evidence and marked Government's Exhibit No. 5.)

Cross-Examination

By Mr. Goodman:

Upon the sale of these tires to Mr. Taplin, that constituted a complete liquidation of my stock of tires and tubes. I had left one U. S. Royal tire, because I had pending a certificate for that. That was the only tire that remained in stock. As to whether upon the sale of these tires to Mr. Taplin I notified the Office of Price Administration, I asked them permission to sell them. They knew that I sold, as I stated; the secretary to D'Orr knew all about it, because he gave permission to me, and how to write that letter. After the sale was completed I did not notify the Office of Price Administration that I had sold all my new tires and tubes to Mr. Taplin, in liquidation of my business. I kept [65] a record of the sale. Some representative of the office of Price Administration subsequently called at my place of business to examine those records. They did examine them. I gave them a copy. I executed the invoice in duplicate, in accordance with the regulation of the OPA. I gave one to the OPA.

(Testimony of Henry Novisoff.)

one for Taplin and one I have in my possession here. That was all in accordance with the rules and regulations of the office of Price Administration as far as my knowledge.

The representative of the office of the Price Administration called at my place of business to examine the records of this alleged sale to Mr. Taplin a few days after the sale. They did not call back again, after the first time, to check my records any further. I told them of the sale to Mr. Taplin, and I had permission before to sell the tires. I did not ever ascertain or discover subsequently, or at any time, that Mr. Taplin was not a retailer. I knew him as a retailer. I knew he was a retailer.

As to whether I ever discovered at any time after the alleged sale to Mr. Taplin that any of the facts that he related in the letter to me were untrue, I couldn't answer that question, because I did not know it. So far as I knew, they are all true, a legitimate dealer.

This truck, or these trucks that were used to transport these new tires on Sunday, had an open back. The tires were clearly visible to anyone who would observe the truck in the rear, but they had doors to close up. I couldn't recol- [66] lect whether they were closed; that's so long. I wouldn't remember. It was during the daytime, but I left the store before they finished it. We counted the tires, and we had a gathering at the house that day, so I left after they received the tires. I left before they closed the doors at the back. I don't know where the tires went to.

(Testimony of Henry Novisoff.)

Cross-Examination

By Mr. Sullivan:

I know Mr. Paddock. He sells Murray tires, with the Star Tire & Rubber Company. He is not connected with the Office of Price Administration to my knowledge. He offered to buy tires from me. He had a customer to buy them, he says. He came in a few days before, and he was figuring to buy all the tires, and I also asked him could I sell it, and he said, "Yes, you can sell it to a man if he has a resale number; you can absolutely sell it." So the next couple of days he came and wanted to buy, and I said, "The tires are sold to Phil Taplin, with permission of the OPA."

Further Cross-Examination

By Mr. Goodman:

No representative of the Office of Price Administration ever came to me and offered to sell my tires at a commission. I know Ray H. Paddock. He sent me a customer, but he did not ask me any commission. [67]

LOUIS C. KILGORE,

called as a witness by and on behalf of the Government, having been first duly sworn, testified as follows:

My business is detective lieutenant, Los Angeles police department. I was so employed in May of last year. I was on duty on the 26th of May, 1942. I went on at 4:00 o'clock in the afternoon. I had

(Testimony of Louis C. Kilgore.)

occasion to go *the* the vicinity of 12th and Stanford Streets here in Los Angeles that evening. Detective Leland Gerty went with me. He is also of the Los Angeles police department. When I arrived at 12th and Stanford Streets I did not immediately on arriving see any persons now in the court room. I did see vehicles there. They were a Dodge closed panel truck, and an International closed panel truck of about 50 per cent larger capacity; I should say one was about a ton and a half and the other was about two and a half tons capacity; both orange or yellow colored; backed in an open shed at the back of a service station. We had received an anonymous telephone call that there were two trucks there loaded with new tires, just before we came on duty, and the Captain sent us there to investigate. We were attached to the auto theft bureau, detective division.

After we arrived, the trucks were jammed back against the back wall. We checked the license numbers to see if they were stolen, and found they were not. We checked the motor vehicle department, and found who the owners were, and [68] found they were registered to a concern that rents trucks, located at 77th and Central Avenue.

We then rolled the smaller of the two trucks, I believe the Dodge, out a couple of feet, and got behind it, and saw that it was well barricaded with steel rods and heavy padlocks. We took a crowbar and pried up on the corner of the door. I think we

(Testimony of Louis C. Kilgore.)

jammed one of the locks off and got the door opened on the smaller truck, and found it was completely full of new automobile tires and tubes.

We then rolled the other one forward, and pried in the corner of the door and opened it enough so that we could see that it was full of tires and tubes. The station was practically deserted. There was a young colored man, about 20 or 22 years old. I saw Louis Vitagliano there. I refer to the man now present in court seated next to the man in a Coast Guard uniform. The man that is standing now. I had a conversation with him, just in front of the trucks, right after dark; I should say about 7:30. He and I were the only ones participating in the conversation. I asked him if he owned the tires, and he said he did. He said, along with five other people in partners with him, he owned the tires. He named Mr. Rose, and Mr. Taplin, as I remember; he told me who they all were, but I have forgotten the names he mentioned, but I do remember those two. I asked him what he was going to do with the tires, and he said he was going to sell them legally to people that had priority certificates; that everything was on the square and nothing illegal was going on, nor was it contemplated. I said, "That being the case, you have no ob- [69] jection if we notify the OPA that these tires are here?" He said, "Certainly not. They know they are here." Then Mr. Taplin came over, I believe, and joined him.

(Testimony of Louis C. Kilgore.)

As to whether I see him in court now, the first one of the three, I believe, over on the righthand bench. It was quite dark, and I am not positive as to the identification, because it was dark, and the station very poorly lighted. As to whether anybody called his name as being Taplin, I think so, but I am not positive, because that was a year ago, and we have had hundreds of other cases since then. I don't think I had a conversation with him when I got there. He came out with these papers, and showed them to me, showed me the invoice, the bill of sale, and the amount, Mr. Taplin, I mean. He had papers in his hand, and practically all of the conversation I had, or all of it, I had with Mr. Vitagliano.

(Document produced.)

That is not my handwriting. That was written by Mr. Gerty, my partner. I know his handwriting. That was made after we came back to the City Hall.

Cross-Examination

By Mr. Angelillo:

I said I went on duty at 4:00 o'clock, and the telephone call had come in previous to that time. I arrived at the service station on that particular date to the best of my memory between 5:00 and 6:00 P.M. The first time I saw [70] Mr. Vitagliano was that first evening that I was there, the 26th of May, 1942. I think it was about 7:30. It was right after dark. I had never seen him before in my life that I know of. I don't think the service station was

(Testimony of Louis C. Kilgore.)

open for the transaction of business at 7:30 P.M. on that particular date. I think they were just closing up about the time we got there. That is my memory of it. There was just this one attendant there, the young colored man.

There is not a storage place directly across the street. I think it is down the street about a block south of them, down Stanford, the next corner.

The first thing I said to Mr. Vitagliano was with respect to the tires and the trucks, questioning him as to the ownership of the trucks and tires, because that is what we were trying to find out. It is not a fact that on that occasion he told me that "the tires belong to Phil Taplin." It is a fact that Phil Taplin came onto the scene shortly thereafter. Mr. Taplin show me a bill of sale and invoices, but I didn't even read them. I had taken Louis' statement that they belonged to six people who were in partnership. He says, "There are five other people in this with me and everything is on the up and up."

Mr. Angelillio: I move that be stricken, if your Honor please, as not responsive to the question propounded to the witness.

The Court: It is simply repetition of what he has [71] testified to before. The motion will be denied.

(By the witness:)

After Mr. Taplin showed me the bill of sale and the inventory, I don't remember whether he told me on that occasion that he was the owner of the

(Testimony of Louis C. Kilgore.)

tires. I don't remember that on that occasion he also told me that he had purchased them from Mr. Novisoff. My memory is that he said he had reported the matter to the OPA, or had already done so. I don't remember whether he further told me that he did not have to report them under the Act as he understood it.

After I had seen Mr. Taplin my conversation might have been with Mr. Taplin, not with Louis. I don't remember. My recollection is that the place where the trucks were was a small filling station on a corner lot, a small corner lot, with one room facing the pumps, and about 15 feet back of this one little room where they kept the cash register and so forth there was a galvanized iron shed with no doors in front, just about big enough for two trucks to be backed in it, and then adjoining that, towards east of that, between this open galvanized iron shed and Stanford, there was another room, looked like a tire retreading room or battery room like service stations have, and that was abutted on the property line at the sidewalk. That is just about how big the station and the property was.

I remember a cafe in close proximity to the place I have just described, right across the street; and there is one [72] adjoining the service station on the west. I don't remember whether the building south of this service station is a concrete building. My recollection is that this service station is not a very large station.

(Testimony of Louis C. Kilgore.)

As to whether 12th and Stanford was my beat or territory, we go on assignments all over the city. I am a detective lieutenant. We are assigned to cases all over the city, but usually only in central division.

WILLIAM S. FITZER,

called as a witness on behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Norcop:

I am investigator for the Office of Price Administration. I have been so engaged since the early part of December, 1941. In May, 1942, I went to the location at 12th and Stanford Streets. That was on the morning of May the 25th. I went in along with Mr. Jack Foster, also an investigator for the Office of Price Administration. I met Mr. Vitagliano there the first time we called at the station that morning.

We told him that we had come to that address and we were interested in the tires that were stored in the two trucks in the tin shed and that we should like to know who owned the tires and what it was contemplated was to be done with them and where they had come from. Mr. Vitagliano told us at that time that the tires were owned by a friend of his, [73] Mr. Phil Taplin, and that Mr. Phil Taplin had bought them from the Perfect-Made Tire Co. and had, as a matter of fact, gone over to the Perfect-

(Testimony of William S. Fitzer.)

Made Tire Co. the day before—on Sunday that was—and had loaded the tires into the trucks and they had brought them over there and they were stored at his place of business there at 12th and Stanford purely as a matter of accommodation to Mr. Taplin. I can't positively remember whether it was at that immediate time or later in the morning that Mr. Vitagliano produced sales invoices for those tires, showing that they had been sold by the Perfect-Made Tire Co. to—that is, they were billed to Mr. Taplin.

Mr. Taplin came there at that location that day. That was later in the morning, and we talked with him about the tires that he had purchased, too. There were approximately, if I recollect correctly, 318 tires and roughly 900 tubes. We had not been able to look into the trucks completely, but we couldn't because they were backed up pretty closely to the wall, but we could see enough where the locks had been broken and the doors stood ajar so that we could see that they did contain tires and appeared to be full, to have a full load. Mr. Taplin said that he had purchased the tires. We asked him what his intended disposition was and he stated that he had planned on buying up tires wherever he could, because he believed that they would be a good investment; that he was of the impression that he would get better prices for them as they became more scarce. It was suggested to Mr. Taplin that [74] inasmuch as prices had been set by the Government on the tires, that there was relatively little

(Testimony of William S. Fitzer.)

possibility of making money on a speculative deal of that kind. And he stated that he believed that, as they became more scarce, the Government would permit higher prices for tires and that there would be an opportunity for considerable profit. We asked him how it happened that they had called for the tires on Sunday; that that was not a normal business day and that most people did not do business on Sunday, of that nature, at least, and he stated that Mr. Novisoff was going out of business and he was very anxious to get his stock moved out as rapidly as possible, and that he was anxious therefore to have them come and get them even if it was on Sunday as an accommodation to him. We asked why they were in the trucks and why they had not been put in some other type of accommodation than that, and Mr. Taplin answered that they had been unable to locate a warehouse that they felt was suitable for the storage of tires, but that after the experience of having the police officers break into the trucks they believed the thing to do would be to store them in a bonded warehouse such as Bekins; and he suggested that they would therefore store them at the Bekins warehouse down in the vicinity of, as I recall, 4th and Alameda, or in that locality. Mr. Taplin at that time stated that he had complete ownership of the tires.

The vans were yellow and red, and I am not sure but what one of them had a certain amount of black, black fenders, [75] as I recall. We took the license numbers of those two trucks.

(Testimony of William S. Fitzer.)

Later I saw the same two trucks at another location in the city of Los Angeles. We saw the trucks on East 4th Street, across from the Bekins warehouse. They were driven there by Mr. Taplin and Mr. Vitagliano. I am not positive that they were driven there by those two gentlemen, but those two gentlemen at least came down and were there present at the time that the trucks were parked on the street at that location, and they went into the offices of the warehouse, where there for a period of approximately five minutes and came out, got in a passenger car and drove away, leaving the trucks standing on the street. The trucks remained there on the street until about 4:30 or quarter to five on that same day, which was Monday, the last day that we had seen them. At that time they were driven to a public garage on 9th Place at Crocker, if I recollect correctly. I think it is called Market Garage. They were parked in there at that time. I saw that take place. I was trailing the vans. They were driven there by Mr. Vitagliano and Mr. Taplin.

There were other people there, but I do not know who they were for sure; that is, when the trucks were first driven down Fourth and Alameda at the warehouse, someone else was there because they had a passenger car there as well in which they drove away in. I don't remember whether Mr. Weinstein was there at the Market Garage or not. I have seen him on other occasions. I am referring to Sam

(Testimony of William S. Fitzer.)

Weinstein. The gentleman with the gray hair sitting here. [76]

I was present at a conversation in the Office of the Price Administration where Mr. Taplin was present. Mr. Foster was present, Mr. Dundas was present. I believe there were one or two others. I don't recollect just exactly who they were. That must have been a day or two later, Tuesday or Wednesday. There was some conversation as to what disposition Taplin intended to make of the tires, and he again stated that he was holding them for speculation; and we questioned him considerably as to the actual ownership of the tires, and Mr. Taplin stated at that time that they were owned by himself and Mr. Vitagliano and Mr. Weinstein. He was questioned as to the ownership interest of each of the three individuals and said that they owned them equally. And he was then asked if that meant that they each owned a third and had a third interest, and he said, "Yes;" that they did have. And it was called to his attention that he had previously said that he had owned them entirely and he said, "Well, that was not the case; that Mr. Vitagliano and Mr. Weinstein also owned them."

(Mr. Norcop offers a document in evidence.)

(The document referred to was marked as Government's Exhibit No. 6, and received in evidence.)

(By the witness:)

I have seen Exhibit 6. While Mr. Taplin was in

(Testimony of William S. Fitzer.)

that office he was asked to give to the Office of Price *Admission* (sic. Administration) a letter setting forth that he would [77] not dispose of the tires without first notifying the Office of Price Administration and state the information as to how or where they were disposed of. This letter was sent in by Mr. Taplin several days later.

As to whether I saw these tires or the vans subsequent to seeing them in the Market Garage, I saw them later on out at the address on City Terrace on the east side. I don't know the exact number now. The tires were at that time being unloaded and stored in a—well, a building in connection with a service station, which I presume had been used for servicing automobiles. At that time, Mr. Taplin, Mr. Vitagliano and Mr. Weinstein were there unloading the tires. Mr. Foster was with me at that time and, as they unloaded the tires or as they were completing the unloading, we went in and talked with them about the fact that they were storing the tires at that locality; and we at that time suggested that Mr. Vitagliano and Mr. Weinstein were very accommodating friends to assist Mr. Taplin in the unloading of these tires and the general care of them.

Cross-Examination

By Mr. Goodman:

I am not an attorney. Before I went into the OPA I was the public welfare administrator:

On this occasion of May 25th, 1942, when I went out to Twelfth and Stanford Streets when I saw

(Testimony of William S. Fitzer.)

these two trucks backed up against this galvanized shed with the tires, I did not find any violations of any of the rules, regulations or directives of the Office of Price Administration at that time. [78]

It was legitimate at that time, for a retailer to purchase new tires and tubes and transport them to his place of business under certain circumstances.

After I went out to the place at Twelfth and Stanford Streets I subsequently investigated to determine where the tires had been purchased. I found that they had been purchased from a dealer who had liquidated his stock. I also found that records were kept of that sale. Our office had been apprised and notified of that sale upon the investigation of those records. We received the information they asked for in connection with the sales. Subsequently I determined Mr. Taplin, who was the purchaser of the tires and tubes as disclosed by the invoices, was the holder of a retail sales license.

When I came out there at Twelfth and Stanford Streets and found no violations, I continued to observe the movements of the trucks and Mr. Taplin and Mr. Vitagliano, because we were not in the least convinced that people would be logically purchasing tires as a speculative investment on the basis that the prices would increase so that they would be a money-making proposition. That was my reason. Then, after I saw these two trucks moved from Twelfth and Stanford Streets until

(Testimony of William S. Fitzer.)

they reached the point opposite Bekins Storage Company I did not notice or observe any violation of the rules and regulations up to that point. Then after the tires were moved from that place to a garage or building in the rear of a service [79] station in the City Terrace district I did not observe any violation of the rules and regulations up to that point. Then when the tires were stored at the building behind the service station in the City Terrace I did not find any violation of any rules or regulations up to that point.

Subsequently I demanded that Mr. Taplin come into the Office of Price Administration. Mr. Weinstein was called into the office and I believe Mr. Vitagliano was, too, although I am not positive of that. I had conversation with Mr. Weinstein myself at the Office of Price Administration. I believe that was after the delivery of the tires to the place in City Terrace. I am not positive of that. If I recollect correctly it was a day or two afterwards. The name of Mr. Benjamin Rose was never mentioned during any of the conversations that I had with either Mr. Taplin or Mr. Vitagliano or Mr. Taplin, as having any interest in these tires. The name of Mr. Brown was never mentioned as having any interest in these tires. The name of Joseph Lieb was never mentioned as having any interest in these tires. The name of Phil Rezniche was never mentioned at any time.

When I observed these two trucks with the tires in them I did not make an inventory of the tires

(Testimony of William S. Fitzer.)

while they were in the trucks. I personally did not ever make an inventory of them. Mr. Foster at that time did not make an inventory of them in my presence. [80]

Cross-Examination

By Mr. Sullivan:

At the time that I went on my first visit at Twelfth and Stanford Streets, up to the time or the date on Government's Exhibit 6, June 1, 1942, I did not find any violations of the rules or regulations of the Office of Price Administration.

(Questioning by Mr. Goodman.)

As to whether it is a fact that the price of tires has gone up about a hundred per cent since that time, new tires, under the ceiling established by the Office of Price Administration, frankly, I don't know, but I don't think so.

R. J. CAMPAU,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

In May of last year I was working for Bekins Van & Storage at 25 East Fourth Street. At the end of that month I recall seeing two vans parked across the street from our building. If I recall correctly Mr. Vitagliano came to our office. He is the

(Testimony of R. J. Campau.)

man right back of counsel there. The man with his hands folded. I had a conversation with him. He was with another man at the time. The conversation was regarding the storage of tires. The substance of it was whether tires could be [81] stored and taken out without certificates. I said, "No, sir; they couldn't be." Then they just walked out the front door and said they wouldn't store them. I observed these trucks later on during the day. I observed the color was striking, orange colored. I did not see them depart. I don't believe they were still there when I went off duty.

Cross-Examination

By Mr. Angelillo:

I did not see any other person with them on that occasion that I now recognize. I don't recognize the other man.

The Court: Is it stipulated, gentlemen, that the person that he identified was the defendant Vitaliano?

Mr. Angelillo: Yes; so stipulated, if the Court please.

GEORGE M. HOOD,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

In May last year I was working for National

(Testimony of George M. Hood.)

U-Drive Truck Rental on Eighth and Alameda. They also had a location at 7026 South Central. It was all U-Drive Truck Rental. There was not a building at one of the places where you could [82] put the trucks indoors. They were always left out on the lot where everybody could see them. I have not produced rental records of the National U-Drive rental company under date of May 24, 1942. I do not recall on that date having any transaction with any of the following persons: Either Mr. Mac R. Brown or Mr. Joseph Lieb or Mr. Benjamin Rose or Mr. Phil Taplin or Mr. Louis Vitagliano or Mr. Sam Weinstein. I did after. I was there the day that one of the trucks came back. That was at 8th and Alameda yard. I believe it was the Chevrolet truck. There was a man with the truck with a triple "T" on the side picked up the driver. I don't know what the man's name was. Triple "T" was on the side of the truck. It was a pick-up truck with black lettering on the side, triple "T".

It seems to me on that day that I saw Mr. Weinstein come down and stand in front of the office there on the sidewalk, but he didn't stand there but a little while, and look up and down the street and he went back up the street. I took it for granted he was looking for Bob Plotkin. I had known Mr. Weinstein previous to that occasion, by him coming in and renting trucks. I see him here in the court room. The man farthest over there.

(Two sheets are produced.)

(Testimony of George M. Hood.)

(The document referred to was received in evidence and marked Government's Exhibit No. 7.)

Referring to Exhibit 7, "Jack. Checked out Jack,"—as to who that refers to, there was two Jacks on the lot. It [83] was either Jack Budd or Jack Harrington, I don't know. They worked all Sunday. The name under the "Paid" Stamp is "Frank," Frank Colombo. He is a fellow. He is still working down there. Frank Colombo is the name on the second sheet. The two Jacks are Jack Budd and Jack Harrington. I don't know which Jack wrote his name in it. There is nothing on here that indicates that I had anything to do with the checking of any or either of the trucks. That is not my writing.

(Exhibit passed to jury.)

CLAUDE GARN,

called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Norcop:

I am a mileage rationing officer in the Office of Price Administration. I was employed by that governmental agency at the end of May of last year as an investigator. I did go to the location called 3200 City Terrace in Los Angeles, at the end of

(Testimony of Claude Garn.)

May, last year. I was accompanied by Fred White, who also was an investigator. At that time Mr. White and I made an inventory of the merchandise which was found in the building there.

(An inventory is produced by Mr. Norcop.)

By Mr. Sullivan: May I ask the materiality of this?

Mr. Norcop: This is offered directly in pursuance [84] of Mr. Angelillo's questioning awhile ago one of the witnesses, I believe Mr. Fitzer, if an inventory had been made, and to show what was in the warehouse, pursuant to the conversation or testimony that the same tires that went from Mr. Novissoff were unloaded out there at 3200 City Terrace.

The Court: That has the numbers of the tires?

Mr. Norcop: Yes; it has the numbers and quantities and sizes.

Mr. Goodman: Your Honor, the invoices which are now in evidence do not reflect the numbers of the tires.

(By the witness:)

The man who investigated with me and I made an inventory of the tires. We opened the box of tubes to find out if there was a tube in there; we moved every tire in the place to get the correct name of the tire or brand, the manufacturer's name. I don't believe the serial numbers were listed there, as I recall. They signed the inventory. Mr. Fred White and I both signed it, and also, Mr. Taplin at that time was requested to sign it and he did so. It

(Testimony of Claude Garn.)

is made up in Mr. Fred White's handwriting. It was made in my presence. I checked the sizes and brand names, Mr. White recorded them on the paper, and we both signed the document.

The Court: It will be admitted as exhibit next in order, subject to a motion to strike as to the other defendants if it is not connected up.

Mr. Goodman: May the objection also be, along with [85] any other objection, on the ground, which may already be in the record, that it is incompetent, irrelevant and immaterial, it does not prove or disprove any issue in the case.

The Court: Of course, the court can't tell at this time.

Mr. Goodman: I appreciate the court's ruling and I just want to make the record on it.

(The document referred to was received in evidence and marked Government's Exhibit No. 8.)

Cross-Examination

By Mr. Goodman:

Mr. Taplin was present at the time I made this inventory. Part of the time he assisted me, and part of the time he did not. He was unloading a truck with additional tires at the time, and consented to move the tires so that it would be more easy to take this inventory. He did it willingly. He co-operated with me. He did not conceal any of the tires or tubes there, to my knowledge.

(Testimony of Claude Garn.)

Redirect Examination

The biggest majority of the tires were wrapped.
The biggest portion of the tubes were boxed.

JACK FOSTER,

called as a witness on behalf of the Government,
having been first duly sworn, was examined and
testified as follows: [86]

Direct Examination

By Mr. Norcop:

I am an investigator for the Office of Price Administration, enforcement department. I have been so engaged since the first part of April, 1942. At the end of September of last year I had a meeting and a conversation with the defendant Phil Taplin at his place of business on, I believe, 3441 Malabar Street, Los Angeles. That is on the east side and the first street north of it is Winter Street, and Malabar Street is more or less of an alley which is the alley behind Winter Street.

Besides Mr. Taplin and myself there was also present Mr. Ernest, an investigator for the Office of Price Administration at that time. I asked for an inventory that he had promised me and an invoice showing the sale of the tires that had been stored in 3200 City Terrace. He furnished me with an inventory and also a bill of sale showing that he had sold these tires to Mac R. Brown.

(Document produced.)

(Testimony of Jack Foster.)

That is the invoice. There were also some other sheets showing the inventory that he handed me with it.

By Mr. Sullivan: We have no objection to this going into evidence.

(Documents produced.)

To the best of my knowledge, all of these accompanied that invoice.

(The document referred to was marked Government's Exhibit 9 and received in evidence.)

[87]

I did not see Mr. Weinstein there at Mr. Taplin's place of business on that occasion. The previous day we had attempted to contact Mr. Taplin; had gone to his place of business, and Mr. Weinstein was there at that time. Mr. Earnest was with me then. October 4th was the day I saw Mr. Weinstein, out at Mr. Taplin's place of business. Just as we arrived there Mr. Weinstein came out of the place. We asked him if Mr. Taplin was in, and he replied that Taplin was out of town.

Prior to having this conversation with Mr. Taplin which I related, and at which he gave me this exhibit, I had visited the 3200 City Terrace location. I visited it in the presence of Mr. Earnest. We found that the tires had all been removed from the City Terrace location.

Cross-Examination

By Mr. Goodman:

Before I became associated with the Office of

(Testimony of Jack Foster.)

Price Administration I was in business for myself. Service Station. I sold new tires and tubes.

I did not know any of these defendants prior to the time that I became associated with the Office of Price Administration. On that occasion that Mr. Taplin delivered to me the invoice, the bill of sale, which has been marked in evidence here as Government's Exhibit No. 9, upon delivery of these documents I did not find any violation of any of the rules, regulations or directives of the Office of Price Ad- [88] ministration.

I also made an investigation to determine where these tires had originally come from, and I had found that they had been purchased by Mr. Taplin from Mr. Novisoff. Our office had been apprised of the fact of that sale. This was a further investigation by our office to determine the ultimate disposition of the tires.

I also found on my investigation that Mr. Mac Brown, who was the purchaser of these new tires and tubes from Mr. Taplin, was an authorized retail dealer. I did not check that to determine it at that time. I checked it prior. I found that the number he gave as a licensed retailer, on the bill of sale or invoice, which is a part of Government's Exhibit No. 9, was correct. He had a legitimate place of business located at 2824 Sunset Boulevard. The nature of the business was gasoline, and he had three or four tires.

RALPH R. WALKER,

a witness called by and on behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Norcop: I am manager of the Arlington Van & Storage. I have been engaged in that business since the last of July, 1942. My business at that time and still is located at 3300 West Washington Boulevard. In September of last year I was in [89] business there.

None of the persons in this court room came to me on or about the 29th of September and asked me whether they could rent storage space for automobile tires. There wasn't any one asked me that. No one brought automobile tires there, and requested that I rent them space to store them. There was a conversation over the telephone. It was in the late afternoon. I sat around until 9:00 o'clock, and I imagine later than that, around 10:00 o'clock, they came in between 9:00 and 10:00. A Lilly Crescent van came in there. It backed in the warehouse. I opened up the door to run my truck out and let them in. They opened up the doors, and here was a load of rubber. As to whether either of the men who brought the truck there were persons who are now present here in this court room, I don't see any of them.

Following that some one came to remove that load of tires. They were put in the set-off space. Some one came later on to remove them from that

(Testimony of Ralph R. Walker.)

space. There were two men. I believe the sailor over there is one. I won't say for sure. He has a different uniform on now than he had on then. I mean the one to the right.

Mr. Goodman: I will stipulate that he is referring to Benjamin Rose, but he stated he wasn't sure he was the party who came there.

(By the witness:)

I had a conversation with the person or persons who removed the tires, before they were actually removed, as to [90] when they would take them out. They said they would take it *ought* at midnight. They removed it that same night. They came in about, oh, 20 minutes after eleven. I do not know where the tires and tubes went to from there. The storage was at our 1904 Third Avenue address, just across the street from my back door. They remained there about four days. I was not paid for the storage.

MIKE KRELING,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

In July last year my business was my service station located at 1516 South Main. I have been in business there 14 months at that time. By business was gasoline, motor oil, tires, accessories.

(Testimony of Mike Kreling.)

I know Benjamin Rose. I recognize him as being here in court. The man dressed in a sailor suit. There he is right there.

Mr. Norcop: Do you stipulate that he is indicating Mr. Rose?

Mr. Rose: So stipulate counsel.

(By the witness:)

I had a conversation with Mr. Rose in July, 1942 at [91] my station. Al Oliver, one of my employees was present. The first conversation, I have a date here, the 21st of July. Whether that was the first or not, I don't know. The substance of the conversation that I, my employee and Mr. Rose had was, I had 48 new tires and 128 or 130 new tubes that I wanted to sell; I talked about it before he bought them. The only thing as I remember, we had given him the price of the tires and tubes, and he wanted to take it up with his partner, and would let us know in a few days. He did not make any mention as to who his partner was. He came back again. I sold them to him. This was all of my tires and tubes, my new ones. I received \$662.31 for them. Mr. Rose signed the invoice there at the time he took the tires.

(Document produced.) [92]

That is the one I am referring to.

(The document referred to was marked as Government's Exhibit No. 10, and was received in evidence.)

(Testimony of Mike Kreling.)

He did not take delivery of them that day. Possibly a week afterwards Mr. Rose came for them. He had a truck of some kind. I just don't remember. It was an open truck.

Cross Examination

By Mr. Goodman:

I did business under the name of Mike's Super-service. I had a retail permit, a sales permit. When I sold these 48 new tires and approximately 120 to 130 new tubes to Mr. Rose I practically liquidated my entire stock. I was paid by check. Mr. Rose gave me his retail sales license. I made a record of the sale.

As to whether I made three invoices, I am not sure about that, because that was all done through—well, a young fellow I had there, Mr. Oliver, the manager. Subsequently, I imagine the Office of Price Administration were notified of this particular sale. They came over and checked my books. At the time I did not know of any rule, regulation or directive of the Office of Price Administration that I was violating. I had obtained information prior to that time that it was legal for me to make such a sale. The tires were picked up during the week, other than Sunday, and during [93] the daytime, and in an open truck.

By Mr. Norcop:

I had not known Mr. Rose before he came to see me about these tires.

(Testimony of Mike Kreling.)

By Mr. Goodman:

I knew Mr. Rose was operating a gasoline station. I knew what the location of it was. It was Olympic and Hill, if I remember correctly.

RALPH C. EARNEST

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

I am with the B. F. Goodrich Company, in their conservation department. I have been connected with the tire industry about 15 years, most of that time here in Los Angeles. Last year I was employed by the Office of Price Administration, from May 1st to November 1st, 1942.

In the course of my duties I met Mr. Phil Taplin. As I recall, I met him in his place of business. Mr. Foster was with me. I believe it was in the latter part of September, or the first of October, 1942. There was present besides us a Mexican boy that was working in and around the establishment. His place of business at that time was in the 3300 Block on Malabar Street. It seemed to be purely retreading and recapping and repairing. I went in and looked around. I don't recall seeing any new tires or new tubes; [94] only retread and recapping material.

At that time we asked him what had become of

(Testimony of Ralph C. Earnest.)

the new tires that were stored on City Terrace, I believe the name of the street is, and he said he had sold them. We may have questioned him about some recapping materials he was using, or repair materials he was using. That was the substance of what happened.

I have seen Mr. Taplin several times in his place of business, when we called over there. That would have been after this occasion. Mr. Foster was with me on the next occasions. At that time we questioned Mr. Taplin as to the material that he was using in the recapping of his tires.

I do not recall any subsequent conversations with him about new tires or tubes after the first visit we had when he furnished Mr. Foster with his invoice.

I know Mr. Weinstein by sight. The only conversation I had with Mr. Weinstein was in company with Mr. Foster a day or two days prior to the time I met Mr. Taplin, when he and I drove over there to talk to Mr. Taplin regarding the sale of these tires. Mr. Weinstein was in front. I don't know whether you would call it the front or the alley. It's in front of the establishment on Malabar, and we drove up and he was in front. He later went into his place of business. Then we drove up and asked him about the whereabouts of Mr. Taplin and he informed us that Mr. Taplin was out of the city, and would return in a few days. That was the only conversa- [95] tion—the only occasion I talked to Mr. Weinstein. I have talked with Mr. Vitagliano.

(Testimony of Ralph C. Earnest.)

I was in company of Mr. Foster on two occasions when we stopped and talked to Mr. Vitagliano.

When we talked to Mr. Vitagliano I was in company of Mr. Foster. I can't say that I personally did any talking. Mr. Foster did it all. At that time I was in company of Mr. Foster, in connection with another case, and was not quite familiar as to the conversation that Mr. Foster was having at that time. It was in connection with the sale of tires, but I don't remember the exact conversation right at this moment.

I do not know Mr. Mac Brown. I have met Mr. Lieb.

JOHN DUNDAS,

a witness called by and on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Norcop:

I am with the Office of Price Administration. I am chief investigator. I have been with the Office of Price Administration since May, '42. I had a conversation with Mr. Taplin, in the Office of Price Administration, about the end of May, 1942. It was about the day before the date of the letter which has been introduced in evidence here from Mr. Taplin to me, which was June 1st, as I recall, and it was on that day before that date that he was in my office. There [96] was present Investigator

(Testimony of John Dundas.)

Fitzer, Foster and myself and Mr. Taplin. Everything I will relate was in the presence of Mr. Taplin. Mr. Foster and Mr. Fitzer told me of the acquisition of these tires by Mr. Taplin. Mr. Taplin stated to me that he had acquired the tires from Novisoff, and he and this Vitagliano and Weinstein were equal partners in the ownership of the tires. The substance of the remainder of the conversation was that I asked him to advise the Office of Price Administration before he disposed of any of these tires. He stated that he would advise us before he did so; that he intended to comply with the regulations entirely, and that if he did dispose of the tires in any way, or move them from their present location, that he would advise us. It was subsequent to that that I received the letter which is in evidence.

There was a reference in our conversation to an inventory that had been taken of the tires at 3200 City Terrace, and Mr. Taplin stated in that regard that those were tires he had purchased from Mr. Novisoff. I refer to the inventory that was made by the OPA; the one made by Garn and White. There was a conversation relating to a discrepancy between the number of tires on this inventory which was prepared by the investigators and the bill of sale from Mr. Novisoff; the exact number of tires which were missing. In other words, there were fewer tires on that inventory prepared. The conversation was about this exhibit. He told me that. I was told that there was a shortage on this in- [97]

(Testimony of John Dundas.)

ventory as prepared by the investigators when compared with the bill of sale from Novisoff. His reply in substance was that he did not know what occurred to them. They were not there, and that was that.

Cross-Examination

By Mr. Sullivan:

I am a lawyer: I knew somewhat about the rules and regulations of the Office of Price Administration at that time; I knew that it was not required that Mr. Taplin give any letter to us at all. It was not demanded of him, however. I did not tell him that. I did not dictate the letter. It was received by me later. Whether he dictated it, I don't know. As to whether I told him at that time that it would be well for him to store his tires, I don't recall having said anything like that.

At the time I talked to Mr. Taplin in the Office of Price Administration, I did not find, other than the discrepancy I referred to in the inventory, any other violation of the rules and regulations or directives of the Office of Price Administration at that time. I would say that the discrepancy that I noticed between the inventory that was made up by the investigators and the bill of sale on the original sale was a violation of the then rules and regulations. It was a violation of the regulations in the sense that there was a failure to account for the tires that had been received by him in the bill of sale from Novisoff. [98]

(Testimony of John Dundas.)

As to whether he told me he did not know that was the case, I don't recall his having said any such thing. He said, in effect, as I recall it now, that he received the particular tires from Novisoff, and knew they were all there at that time. He did not know what had happened to these few tires that were missing between that time and the date when the inventory was made. We had no information at that time in our office though, that he did know, and was deliberately telling us a falsehood. Even at the present time, no accounting has been made as to where those tires are, as far as I know.

During the period of time extending from the Novisoff deal to the present there hasn't been a lot of stealing and hi-jacking of tires from dealers and others, to my knowledge. I never ran across any of that personally. I did not ever advise Mr. Taplin that he should put his tires into storage because they might be hi-jacked or stolen from him.

My recollection is that there was some conversation to this effect: Mr. Taplin assured me, not once but several times, of his desire to handle these tires legitimately, and it was in that regard that the letter was suggested. It was suggested some time during the conference—and by whom I can't tell you, but there was some conversation to the effect that the tires might very well be placed in a bonded warehouse and might then be withdrawn at any time upon presentation of a certificate. That was just discussed. Whether it [99] was suggested to him that he do it, I don't now recall. It is not true that

(Testimony of John Dundas.)

at the time that he put those tires into a bonded warehouse he could not get them out again; they would be frozen. He could get them out on a certificate. They could get the certificate from the Board, the same as on any occasion. Any dealer could sell a tire if he had a certificate at that time, but he could not sell it to other dealers unless he had a certificate. At that time the regulations provided that a dealer might sell tires to another dealer, just for the purpose of going out of business. He could not cross-stream tires from dealer to dealer just to replenish stocks.

As to whether at the time of the meeting in the Office of Price Administration, I suggested the letter at that time, I don't recall. It may very well have been that we suggested such a thing. He asked us what the wording should be and it may very well be we did suggest the wording, I don't remember. I did not tell him at that time that I suggested the letter that the law did not require him to do that. [100]

DOUGLAS F. SCOTT,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

I am a trust officer with the Bank of America. In August 1942 I was working at the Hollywood main office on Ivar and Hollywood Boulevard.

(Testimony of Douglas F. Scott.)

I know Mr. Benjamin Rose. I see him here in court. He is the gentleman with the sailor's uniform. In the month of July I first talked with him at my office in the bank in Hollywood. No one else was present there at my desk but the usual staff in the department. No one else heard the conversation that Mr. Rose and I had. He asked us whether we would rent to him the premises at 613 North Virgil, on which we were acting in the capacity of agents for some Japanese. We eventually rented the place to him on a monthly basis, beginning on August the 1st, 1942, at \$10.00 a month. He occupied the premises there for two months, October and November and September, three months,—from August the 1st to October the 1st. He said he wanted to store some furniture and equipment. He said, as I remember, that his business was to purchase equipment and sell it.

Cross Examination

By Mr. Goodman:

We subsequently served notice on Mr. Rose to surrender possession of the premises when we leased that store along [101] with the store in the rear. That is the reason he moved on or about November the 1st or October the 1st, 1942. He did not tell me at the time what the type of equipment he was going to store there was.

Redirect Examination

By Mr. Norcop:

I asked him whether it was heavy equipment. He said it was not.

HORACE B. RANDALL,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

My business is insurance and motor club at 5901 Sunset Boulevard. In 1942 my business had control over a building there. I have a plat of my property there. The back part of the building, where the garage is was on the premises when we purchased it in 1935. It has been in that physical make-up since.

I met Mr. Benjamin Rose just once. I had a conversation with him with respect to this property. He asked to rent storage space in it. That was on or about September 29, 1942. The space he rented from me is the space in the upper [102] lefthand corner on this plat. I circle the space rented to him. The rent was \$30.00. It was rented verbal, month to month. I don't know how long Mr. Rose occupied that space. He paid rent from October 1 to October 31. Previous to Mr. Rose occupying that space there had not, to my knowledge, been any prior business in there, not in that building.

Mr. Norcop: I offer the plat in evidence.

Mr. Goodman: I object to it upon the ground that it is incompetent, irrelevant and immaterial.

The Court: What is the materiality of the exact location?

(Testimony of Horace B. Randall.)

Mr. Norcop: We have already said in our opening statement, and there will be testimony to connect it up, that that is the location where the tires from 3200 City Terrace, or a portion of them, were stored, and Mr. Rose, we will show by another witness, transported them through the channels of trade to that place.

The Court: I will admit it as exhibit next in order.

(The document referred to was received in evidence and marked Government's Exhibit No. 11.)

Cross Examination

By Mr. Goodman:

This portion of the *plot* that I have described here, in Government's Exhibit 11, and which is labeled "Garage" on the exhibit, was not a clear view from the street. There was [103] some view there from the street; you could see down two driveways between three signboards. There are windows in the upper part of the door in this structure which Mr. Rose rented. I couldn't say how many. It's a garage door. I don't think I was in the vicinity of the premises at any time while Mr. Rose used the premises. He told me what he was going to store. He told me tires and batteries. I do not know when Mr. Rose left the premises. I do not know why he left the premises.

TED W. MENDENHALL,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

I am a clerk with the Hertz truck lease. With the truck rentals. That is located at 718 East 3rd. I have produced a record of my company in response to a subpoena.

I rented trucks to Mr. Rose several times. He came in and got this truck at 10:37 P.M., October 1st, and returned it 2:14 P.M. October 2nd; 76 miles.

(The document referred to was received in evidence and marked Government's Exhibit No. 12.)

This record shows what type of truck. It is a Chevrolet refrigerator, it says, panel truck, all closed. It is an entirely closed-in body all the way around, just like a panel truck, we call it. Mr. Rose did not state to me when [104] he rented the truck what use he wished to make of it. I saw the truck when it was returned. When it was returned it had four tires in it.

(Witness examines tires.)

(After examining tires.) These are the same four that was in the truck when it came in. I am able to recognize the tires because I remember the size. They all had the same tag on them. I noticed the name of some dealer sold to them. I don't know what name it was called. I am referring to this label shown me by Mr. Norcop.

(Testimony of Ted W. Mendenhall.)

Mr. Norcop: We offer these four tires into evidence at this time.

Mr. Sullivan: We object to their materiality.

Mr. Shippee: In so far as the defendant Lieb is concerned, we desire to make the special objection that they are incompetent, irrelevant and immaterial, and not tending to prove or disprove any issue as far as he is concerned.

Mr. Goodman: I would also like to ask the witness on voir dire, with the court's consent, for one or two questions before your Honor rules on the objection.

The Court: Yes, I will permit it.

(By the witness):

I said I was present when the truck was returned. I remember that Mr. Rose didn't bring the truck back. Mr. Rose did not bring the truck back. Mr. Rose took the truck out. He didn't return it.

Mr. Goodman: We now object to the introduction of the tires on the ground it is incompetent, irrelevant and immaterial, [105] and no foundation laid.

The Court: The objection is overruled.

Mr. Norcop: For the purpose of the record only, I would like to refer to one of these tires as being Goodrich Commander and the size is 4.75-5.00-19 4-ply, and there is a pasted slip on here "From 5400 East Olympic Boulevard, P.O. Box 5700, East L.A. Branch, Los Angeles, Calif., merchandise from" in handwriting "Perfect Made

(Testimony of Ted W. Mendenhall.)

Tire Co., 1161 South Main Street, Los Angeles''; and each of the tires is identical as to size.

(The tires referred to were marked Government's Exhibit No. 13 in evidence.)

DON BEGLEY,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

I am with the same Hertz-U-Drive Company, at the same location as the previous witness, Mr. Mendenhall. I was so employed on the dates that he mentioned. I saw these four tires—Exhibit No. 13 at my place of business. Someone called there and discussed with me having me turn over the tires to them. I do not see that person in the courtroom now. I have been looking and haven't recognized anyone here, as I remember. Then I turned the [106] tires over to the government agency.

Cross Examination

By Mr. Goodman:

I was not there when the truck was returned. I don't know who returned the truck. I did not make an attempt to discover who owned the tires after I found out they were there, except to inquire where they had come from. I found that they

(Testimony of Don Begley.)

were locked in my office at the time. I did not then turn them over to the Office of Price Administration. I believe it was the FBI that was called on the thing. Our company made no attempt to discover who was the owner of the tires other than that we found them in the truck when it checked in. We didn't make any investigation. We knew whose possession they were in. We did not contact either the person who originally hired the truck or the person who returned the truck to notify them that four tires had been left in their truck. We didn't contact either.

Cross Examination

By Mr. Sullivan:

I was not present at the time the truck checked in, but the boy that did check it in just got suspicious, for some reason or other, and called the FBI. That was all we had to do. He did not tell me what his suspicions were, except the tires were rationed and he just suspected they were "hot". That is the only reason that I know of.

[107]

By Mr. Goodman:

(By the witness):

Someone called for those four tires after the truck came back and I spoke to him at the time and told him we had been ordered to hold the tires. We did not return them to the man who called for them because we had been told to hold them. If that man who called for the four tires

(Testimony of Don Begley.)

that I speak about is in the courtroom, I don't recognize him.

SAM KELBER,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

My present business is buying cattle in North Dakota. Previous to being in business in North Dakota I was in business in Ontario, California. My business there was primarily tires. We also handled batteries and accessories. I was engaged in that business in Ontario approximately eight years.

I know Sam Weinstein. I see him here in court. In the summer of 1942 I had a conversation with Mr. Weinstein at Desmond's, here in Los Angeles, near Sixth and Broadway. There was another party with him at the time. I see the other party in court. The gentleman with the brown coat. I [108] think his name—they call him Louis.

(Stipulated that he is referring to Louis Vitagliano.)

My wife was with me. The substance of the conversation was that I had a lot of new tires; I had decided to liquidate my tire business, and I would like to sell them; and during the course of the conversation with Mr. Weinstein he told me

(Testimony of Sam Kelber.)

he thought he could find a customer for me. That was what it pertained to. He told me he thought he could find a customer, and if he did, he would call me. He called me later by telephone. As to the substance of that telephone conversation, well, he had a customer, he thought, and he made an appointment with me to come out to Ontario, to my place of business. He came out there with Mr. Rose. I think at that time there were just two of them that came to my place of business. My place of business in Ontario was at 417 East A Street.

We discussed the price of the tires, and, as I remember it, we went up and looked at the tires, and we tried to arrive at a tentative amount; we tried to get a rough idea of what the tires would amount to. We arrived at a rough figure of \$4400. They told me that they would let me know as to whether they could handle them or raise the money to handle them.

I heard from them again. They called me, and I made an appointment to meet them in Los Angeles. I met Mr. Weinstein down here, at a Shell service station. I don't remember [109] the exact location, but it was supposed to have been Mr. Rose's station. It was a station with a parking lot in conjunction with it. If I remember correctly, around Tenth, Eleventh or Twelfth, and possibly Hill. I met Mr. Weinstein there. Just him alone. We had a conversation, and he said we were to meet Mr. Rose at the bowling alley in the next

(Testimony of Sam Kelber.)

block over. We went to the bowling alley, the two of us. We met Mr. Rose there. The three of us spoke a few words; then the bulk of the conversation was carried on between Mr. Weinstein and Mr. Rose out of my hearing, but in my sight. That conversation carried on about thirty minutes. We talked, and Mr. Rose said he could handle the tires, and gave me a hundred dollar deposit cash, and we made arrangements whereby he would come out on Sunday. That was Sunday August 1st when they came out, at my home. They took delivery of the tires that day. They came in Mr. Weinstein's car, Mr. Rose and Mr. Weinstein, and Mr. Rose's brother, as I generally understood, and two trucks, two vans.

The models themselves, so far as the motor was concerned, they were older ones, but they were closed vans, regular moving vans. I do not know who was driving those vans. It was not any of the people I have described. There were two drivers; one for each van. We commenced to load the tires and tally them. My brother was there. He came in, oh, possibly when we were half loaded, and the man that was working for me, whose name is Floyd Mason was there, and my wife. [110]

We were loading the tires, and trying to tally them at the same time, and Mr. Rose was helping his brother and Mr. Weinstein. I don't remember Mr. Weinstein helped load them or not. I think he did; when my brother came in he helped. The only incident during the loading, was a man and

(Testimony of Sam Kelber.)

woman stopped by. I did not have any conversation with these two people that stopped by. They had a conversation with Mr. Rose. I did not hear it. I made out an invoice of the tires that I was selling. I had a conversation with Mr. Weinstein and Mr. Rose. Mr. Rose told me that he had a number of service stations, and that's all in regard to the type of business he had.

(A yellow slip is produced.)

That is one of a triplicate copy out of the register we used. We used a register with the triplicate invoice copy, and that is one of them. This reflects the sale on that date, August 1st. It is in my wife's handwriting. It is a seller resale permit AA63791, and the date; the name, Benjamin Rose; and his business address, 955 South Hill; the quantity of tires and tubes, and the amount of money. This at the bottom is in Mr. Rose's handwriting, which reads: Ben Rose.

These five sheets that you are now handing me are tally sheets; some in my handwriting; mostly in my wife's handwriting; the tires and tubes as we counted them out in this transaction.

As to these bookkeeping or accounting appearing two [111] sheets that you are showing me, this was an inventory, made out of our new tires, and the floor tax, when we had the floor tax, when it first came in, of our new tires. My bookkeeper made that out. This other sheet you are now handing me is a tally. I think this had a lot to do with the price. I think the prices were jotted

(Testimony of Sam Kelber.)

down here, as I remember, of the individual tires. On the back the figures look like an addition of the amount of tires.

(The documents referred to were received in evidence and marked Government's Exhibit No. 14.)

I did not see Mr. Louis Vitagliano out there at the time of the delivery of the tires. He was at my home on Sunday, and that was the date of delivery. It must have been. He was there. He wasn't there all the time, though. He was there sitting in the front room when the tallies were made, when we were sitting figuring the prices.

Cross Examination

By Mr. Goodman:

I had decided to liquidate my business and go to North Dakota prior to the time that I met Mr. Weinstein. I had not closed; my place of business was still operating. I moved the new tires and new tubes up to my home. At the time Mr. Weinstein first contacted me, and subsequently, when Mr. Rose purchased the tires, the new tires and tubes were already at my home.

As to whether it is a fact that the \$100.00 that was [112] paid was paid to me in cash on July 31, 1942, I couldn't say; I don't remember the exact date. I do not recall that I planned to take the train on Monday to go to North Dakota. I planned, if the tires were moved on Sunday to leave on Sunday, but not by train. I was very

(Testimony of Sam Kelber.)

anxious that these tires be removed so my family could make the trip with me. I don't know if I suggested that they come here Sunday, or they suggested it, or both did. I know I wanted them out of there as soon as possible, so that we could go.

As to whether the invoice I prepared, dated August 1, 1942, was on Saturday, I think it was Sunday. But the invoice was made out on Sunday. It may be October 1st, but it was still made out on Sunday. That invoice was prepared on Sunday. I can't say when the arrangements were made to pick the tires up on Sunday, whether it was on Friday or Saturday.

As to whether I sold the tires to Mr. Rose at cost, it was slightly above cost. I don't remember the exact percentage that we figured. There was a percentage figured above cost, because I remember at that time the Government allowed a raise. The exact amount, though, I don't remember.

Just prior to the sale to Mr. Rose I had a retail sales license, to deal in the sale of new tires and tubes. Before I made the sale to Mr. Rose I contacted the Office of Price Administration and I told them I was going to make the sale. Not that particular sale, but the Office of Price Administration at that time, Mr. Stevens, was trying to help me find [113] the customer for them. He knew I wanted to liquidate the stock, and said if he could find a customer for me he would do so;

(Testimony of Sam Kelber.)

that if he heard of anybody that wanted to buy them. His name is Stevens, Mr. Stevens. I don't see him in the court room now. I did not contact the Office of Price Administration again when I made the sale to Mr. Rose. The tires were delivered on Sunday and we left the same Sunday;

As to whether I called the Office of Price Administration on either Friday or Saturday, just when I was about to make this sale, and advised them that I was going to make the sale, it is possible, but I don't remember doing it.

I did not know of any rule, regulation or directive of the Office of Price Administration that was being violated at the time the sale was made. I was told that it was a perfectly legal sale. During my conversations with Mr. Stevens I was given to understand that it was legal to cross stream but not up or down stream. In other words, I could sell to another tire dealer, but I couldn't sell to the consumer without a permit, or back up to a wholesaler.

Mr. Rose exhibited to me his seller's permit issued by the Board of Equalization of the State of California at Los Angeles. That is where the number was taken from that was put on the invoice. Mr. Rose gave me the number. He paid me the \$100.00 deposit, brought out a cashier's check for \$4,400.00, and we did a little figuring and there was another \$75.00 which he paid me by personal check. [114]

(Testimony of Sam Kelber.)

Cross Examination

By Mr. Angelillo:

On the first occasion that I met Mr. Vitagliano at Desmond's I did not have a conversation with him. As to whether I was merely introduced to him by Mr. Weinstein, who stated, "Well, meet my friend Louie Vitagliano"—it was something to that effect. He was not in on the conversation. As to whether he left and said he was going upstairs to buy some clothes, that I don't remember. I don't know if he walked away, but I know that the conversation was with Mr. Weinstein and he wasn't in it.

Then I made an appointment or an arrangement with Mr. Weinstein to meet at either my station or at my home. Mr. Weinstein called me first and then he and Mr. Rose appeared at my place of business.

As to whether it is a fact that shortly after the first conversation Mr. Weinstein and Mr. Vitagliano called at my home and stated to me that they were in my vicinity and stopped there, it is possible but I don't actually remember it. The tires were not loaded at the place of business. They were loaded at my home. I have a definite recollection of having seen Mr. Vitagliano on that occasion. He did not in any wise help load the trucks or remove the tires. It is entirely possible that he was there before, but, as I remember, he was there on the Sunday. I didn't have any conversation with him. The day that he was at my house he excused himself to go down- [115] town to get a cigar. I re-

(Testimony of Sam Kelber.)

member that. But I didn't have any conversation with him. The times that I did see him I did not have any conversation pertaining to the sale of tires.

Cross Examination

By Mr. Sullivan:

This meeting at Desmond's was not by pre-arrangement with Mr. Weinstein. I just happened to bump into him there. I knew Mr. Weinstein before that. I had a conversation with Mr. Weinstein as to what he was to get out of this transaction. I don't remember just where the first conversation took place, but he told me that he was merely trying to do me a favor; in other words, find me a customer, and he did expect something out of it. I don't remember the exact course of the conversation, but I do remember that he told me he wants some from me and he was going to try to get a commission from Rose. Mr. Weinstein did not pay me any money, though, at all.

Redirect Examination

By Mr. Norcop:

I paid Mr. Weinstein some money. After the tires were loaded and the tally was completed and the deal consummated. I had a conversation with him when that payment occurred. That was in the presence of my wife, and not in the presence of either Rose or Vitagliano.

He told me that Rose was not giving him anything and [116] told me he didn't like the way

(Testimony of Sam Kelber.)

Rose was chiseling on the deal, and that he hadn't gotten any money from Rose yet; and when we got through, he told me the money that I would give him I should give him out of sight of Rose, which I did.

MRS. STELLA KELBER,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

I am the wife of Mr. Sam Kelber who was just on the witness stand. I was at my home on the date that he has mentioned, the Sunday, August the 2nd of 1942, when Mr. Rose purchased some tires. I had a part in the transaction that day. I helped to tally the tires and tubes as they were loaded out, and I also did some of the writing on Exhibit No. 14. On the back I wrote the license numbers and the names of the truck owners that took the tires away. I think it says "Lilley & Harradine HE 4456" and "Lilley Crescent Van & Storage BE PC X 2090 BE PC W 5279 Gen. Mtrs."

As to who all the persons were that I saw there that Sunday while the tires and tubes were being loaded and before the trucks departed, there were the two drivers of the trucks and Mr. Rose and Mr. Weinstein, my husband, and this Floyd Mason

(Testimony of Mrs. Stella Kelber.)

and my brother-in-law and myself. And I think [117] Louis was there. I am almost positive he was. I refer to the man in the tan suit.

(Stipulated she referred to Louis Vitagliano.)

Mr. Rose and I had just a general conversation. I think I asked him what he was going to do with all these tires and he said he had four or five service stations and he was going to sell them to the service stations.

SAM KELBER,

recalled.

Recross Examination

By Mr. Sullivan:

I paid to Mr. Sam Weinstein \$50, no more.

BILL SOUKESIAN,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

My business is radiator repairing and tire business located at 736 North Broadway. The name of the business is North Broadway Radiator and Tire Company. I am in business with my brother, Harry Soukesian. My brother and I have been in business

(Testimony of Bill Soukesian.)

there about 14 years. Our business is the selling of tires and tubes and repairing automobile radiators. [118] I know Mr. Weinstein. I have not known him very long. I first met him at our place of business last year sometime. I did not later have a transaction with him; just a conversation. That was in 1942, a summer month. I think it was probably around September. Mr. Weinstein and I were alone. I think he happened to pull up in front of our place of business and just walked in and asked me if we had anything to sell in the way of truck tires or anything; he was in the market to buy used tires; and I told him at the time we were not in the market to sell anything.

I had a conversation with him on a later occasion. I think he was back once or two or three times after that, and we were discussing tires. I told him I might sell some of my new tires to lower our stock.

I met Mac R. Brown after I had met Mr. Weinstein. He came with Mr. Weinstein. That was the first time I had met Brown. I don't recall whether anyone else came besides Sam Weinstein and Brown on that occasion. I had a conversation with them. There was no one else present besides us three. That took place in our place of business. We were discussing about our new tires, stock of new tires and tubes, if I was interested in selling; and at the time I was not very interested because I had another prospect that I was discussing sales of the tires to. I don't recall whether I told them

(Testimony of Bill Soukesian.)

or not, but I kind of stalled them off. I did not get down to discussing prices with Brown or Weinstein on that occasion, [119] I don't think. On a later occasion we did. Mr. Brown was there on the occasion when I discussed prices. Weinstein was not there then. That took place at our place of business. My brother was around. He asked, I think, at what prices I might be interested in selling. I told him "cost—plus five per cent." In other words, if we had bought on today's market we would have a five per cent margin. He said he had a few gas stations that he needed merchandise for. He said he owned a few gas stations. I think he was going to sell these tires in those stations. I think we agreed on the price and I think I decided to sell to him. I did sell to him. Mr. Brown, when I arranged to sell the tires to him, before I delivered them to him, said it would be very easy for him to dispose of them because he had so many different connections, such as these aircraft factories, where they needed tires and where they were able to get these certificates much easier.

I don't recall the exact date when I first delivered tires to him, but I have the invoices that carry the date and complete transaction.

(Invoices produced.)

(The document referred to was received in evidence and marked Government's Exhibit No. 15.)

(Testimony of Bill Soukesian.)

Those are the invoices to which I have just adverted. This card on top is a resale tax number permit. This invoice is made out to "Rappan Service." That is his service station, he said, at the time, at 2824 Sunset Boulevard. The first page says "First load". As to how many tires went out on that [120] date, September 25th, the numbers are on there. I think it was a hundred and some odd tires that went out on the first load. The invoices show the total price paid by Brown for all these tires; it is close to \$5,800; the addition to all the amounts should sum up to around \$5800. I had Mr. Brown sign every one of the invoices. The first, second, and the third page I had him sign twice, as he took delivery twice on that page, and the third, and the fourth, and the fifth, and the sixth. He signed just every one of those he signed. That first delivery took place on the 25th of September; the date of this invoice.

There was used in transporting the tires away from my station a Chevrolet truck. It is sort of a panel truck. It is all closed in, something like the packing companies haul their meats in.

Besides Mr. Brown and myself there were there on that date about two or three men. As to whether I see any of the other men in the courtroom now who were there, it is pretty hard for me to recall, because most of my business was done with Mr. Brown.

As to why Mr. Brown signed twice on one of these pages, that was because he took some tires

(Testimony of Bill Soukesian.)

in his own personal car and then the truck came back and took the others. He took the "4-600-16, 6-250-16 Standard Firestone and 1-600-16 tube" in his personal car, six tires and one tube.

About that part of the delivery he said he had a sale [121] and that he needed it right away.

On the first day, first of all, I called up the OPA and made sure that it was all right for me to dispose of my tires, and they advised me that it was all right, just so I made three forms of invoices so they could refer back to them at any time that I wanted to, and as long as they gave me their permission I went ahead and sold to Brown.

As to other men who were there, most of them were short, heavy-set fellows. It is pretty hard for me to identify any of the defendants in the case because I was transacting all the business with Mr. Brown. He is the only defendant that I had anything to do with; and the only one that I know clearly in my mind that was there. On the first occasion, I think there were two others besides Mr. Brown, and then there were three on one other occasion. These other men loaded the truck. I noticed one of the men, I think was kind of keeping his eyes out on the back end of the lot, kind of watching around, and I was asking him what—

Mr. Sullivan: I move to strike that as a conclusion.

Mr. Norcop: Just a moment. He was going to relate a conversation, if the court please, and he was interrupted.

(Testimony of Bill Soukesian.)

Mr. Sullivan: And the witness was asked for a conversation and the answer is not responsive.

The Court: Well, it is preliminary. I don't think it hurts anybody. Go ahead.

(By the witness):

I was asking them what they were afraid of and he said [122] they were afraid they might be hijacked. That is what Brown said.

Cross Examination

By Mr. Goodman:

As to whether at the first time that I met Mr. Weinstein and I was selling out my new tires and tubes, I was not exactly trying to find customers for them, that is, I was not very interested in it. I was kind of worried because we had quite a large stock and at that time there was so many places being broken into and it was very hard for us to buy insurance; so my mind was not made up definitely as to whether to sell or not to sell. Subsequent to the time I met Mr. Weinstein I did not have several prospective purchasers who were dealers to buy the tires. I had one other prospect besides Mr. Brown. He was a party also in Pasadena, and he was there one day when Mr. Weinstein drove up, and he said, "That's the same party I had in mind to sell to" and so he left. He did not want Mr. Weinstein to see him. His name was Reuben. I have known him for quite a number of years. We went to school together.

At that time I was not dickering to get the best price I could by the sale of my tires, either to Mr.

(Testimony of Bill Soukesian.)

Reuben or Mr. Weinstein or Mr. Mac Brown. The price was the same, regardless. At that time the price of the tires had gone up 16 per cent.

When I stated on direct examination I was conversing [123] with Mr. Brown and Mr. Weinstein about the sale of the tires, and at that time I had some one else who was interested in it, and I did not want them to know about it, my reason was Reuben asked me not to tell him he was dickering on it. I thought he had a suspicion at the same time that they were trying to sell to the same party I had in mind.

I did not liquidate the complete stock. I had left about 100 tires. I have since sold them. The balance of the tires left were sold **individually, two or three** at a time, on certificates. From the date I made the sale to Mr. Brown it took me four or five or six or seven or eight months to sell the 100 tires. As to when I last had a new tire in my place of business, I always carried a stock of new tires. We have continued doing business. I have bought new tires right along from the factory.

I contacted the office of Price Administration before I made the sale. I phoned. They told me it was perfectly all right to sell to a tire dealer. Mr. Brown gave me his address. I went by and noticed his place, and noticed the name on the service station, so I figured it was a safe transaction. He also executed a certificate. He executed a card, with his signature on it, and his sales tax number on it.

C. A. HUMBERT

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as [124] follows:

My business is the moving and storage business at 4428 Melrose Avenue. I have been in business there approximately eight years. We do business under the name of Bay Cities Express & Transfer.

I know Benjamin Rose, I have known him since about the middle of last August. I see him in court; the man in uniform. I first saw Mr. Rose when he came to my office to see about some moving. I had a conversation with him. It was before that; in the middle of July. He was alone. My wife was there, but I walked out of the office, as he was coming across the street. He had been there once before, some minutes before that, and was across the street, and I walked outside, and met him outside, and talked to him on the sidewalk. The conversation was about getting a couple of vans to move some accessories, automobile accessories. At that time the trip was to have been from Pasadena. That was the substance of the conversation. I don't believe I saw him again—he made a tentative arrangement for a man to come on Sunday. That was August the 2nd. I didn't talk to him. I wasn't at the office at that time. I saw Mr. Rose on August 2nd, 1942. My father was in the office that morning when my two drivers left.

I went to Ontario. My wife went with me. In Ontario I went up, I believe it was on 5th Street.

(Testimony of C. A. Humbert.)

I didn't have the destination in mind to go to when I left the office. All [125] I knew was 5th Street. When I arrived at that place on 5th Street my two vans were there. One was backed in the driveway, and one was sitting on the street. They were getting tires out of the garage and tallying them.

As to whether I can identify anybody in court who was there, Mr. Rose, and Mr. Weinstein were the only two, and the truck drivers. There was also a young man that was up on the stand a while ago, and his wife, and my two drivers. That is all I know of. I had a conversation with Rose while I was there. I asked him what was going on, and he said it was all right. I was there, I imagine, five minutes, and I left for a short time, and came back again, and went down and got some gasoline, and got some beer. I treated everybody. It was a good deal. I was there when the trucks had been loaded and left. I stayed until after the trucks departed. One driver was Don Parmalee, and the other Sam Dawden. The vehicles of mine used that day was a GMC ton and a half covered van, and a Chevrolet ton and a half covered truck or van. As to whether they had any labeling or name on the outside of the vans—my original van that I always had, did not have; we were repainting it, and it did not have any lettering yet. The other one I bought as one of three from another company. It was labeled Lilley Crescent Van & Storage. I followed the trucks into Los Angeles. Mr. Rose told me to meet him at the corner of Santa Monica

(Testimony of C. A. Humbert.)

and Virgil in Los Angeles. I saw him there. He had us drive down to 613 North Virgil, and drive [126] in back, in the lot. Mr. Rose was there, and a young boy, I imagine about 18 years old. I don't know him. And the truck drivers. We pulled the trucks in. Then we decided to have lunch. We came back, and we backed each truck into the back door and rolled the tires off. That room that I put the tires in was not up to the street front. It was about that big; one third of the building. Both truckloads were unloaded into that room. The tires were all wrapped; some of them were loose, but they were wrapped. The tubes were in boxes. There was not any conversation there with Mr. Rose during the unloading that I remember. The room in which the tires were put was all boarded up, sealed up; the windows were all boarded up. Mr. Rose told me if I needed any tires he would go down to the OPA for me and save me a lot of red tape.

The next business I had with Mr. Rose was on August 22nd. I can't remember having a conversation with him from my place of business. He came over, and said to have a couple of vans meet him over—— That was not the second transaction. I am wrong. This was Pasadena. That was the 22nd. The only conversation I had with Mr. Rose concerning the trip, before I made it was just to meet him at that address. I made the trip myself. I took the same Chevrolet van, Lilley Crescent. The one that had on it Lilley Crescent Van & Stor-

(Testimony of C. A. Humbert.)

age. I went to 1850 East Colorado. There were quite a few people there. The only ones I remember were Mr. Rose and Mr. Weinstein. [127] I would say about five or six people were there. We all formed a line, and rolled the tires to the truck, and loaded them up. The loading took about 20 or 25 minutes. I did not have any conversation with Mr. Weinstein out there. Mr. Rose told me to take them to the same place where I had taken the previous loads, and he would meet me there. That was 613 North Virgil. I did that. I was alone as the driver. When I got over to 613 North Virgil, Mr. Rose met me there, and we unloaded them. Just I and Mr. Rose, as I remember.

As to the condition of the inside of the warehouse—there weren't many tires there from the first load.

As to how long it was that I had been there previously with the first two loads—according to my records it makes it 20 days. When I first brought the two loads in from Ontario, the room was I would say better than three-quarters full of tires. There were not other tires in there at the time I unloaded from Ontario. That was the first time. They filled the room better than two-thirds. When I took the tires there from Pasadena, very few tires were left. I don't know how many there were.

Mr. Goodman: I move that the answer be stricken, that there were very few tires, as being a conclusion of the witness, speculative and conjectural.

(Testimony of C. A. Humbert.)

By the Witness: I did not take time to count them.

The Court: Motion denied.

Mr. Goodman: Exception. [128]

The Court: Exception noted.

By the Witness: Around the floor of the room on that day, the 22nd, there was quite a pile of tire wrappings.

As to whether I had a conversation with Mr. Rose after unloading this single load that I brought in from Pasadena,—with respect to my invoice or bill—I can't remember that now. I gave him an invoice. He signed my copy, and I gave him the paid bill. Referring to an invoice of the Bay Cities Express & Transfer 8-22-42—that's mine.

(The document referred to was received in evidence and marked Government's Exhibit No. 16.)

(Reading): Shipper, Rose. From 1850 East Colorado to Virgil and Clinton. Auto Accessories. Three hours at \$4.00 an hour, \$12.00. Van. My own name signed.

By the Witness: Mr. Rose told me the words "Auto Accessories." I did not question him much on that. I was told to put down "Auto Accessories." Mr. Rose told me to put that down. I had one more trip on September 29th. Prior to that trip I had a conversation with Mr. Rose. He was in the office. With respect to the September 29th trip, it was some days before that, he came to

(Testimony of C. A. Humbert.)

the office, but I can't say offhand. There was always somebody in my office. I can't honestly say who was there, or who was not. My conversation with him was just on releasing the vans for that particular trip. The trip was supposed to have been Friday. It was changed. It was changed to, I believe it was, to [129] Saturday. I don't recall now. I went on the 29th. I drove one of the vans myself, and another man drove my other van. Prior to their departure on the 29th, Mr. Rose asked me to meet him at Brooklyn and Evergreen. In fact, the exact words were to drive out to Evergreen, and turn left half a block and park and wait. The conversation occurred in my office. Besides myself and Mr. Rose, Max Cramer, the other driver, was present. No one else of the other defendants here in court was present.

I used two trucks labeled Lilley Crescent. One was a Ford and one a Chevrolet; both one and a half ton trucks. They were closed vans. We drove over to Evergreen and Brooklyn and parked there for about an hour. It was late in the evening; very late—5:00 or 5:30. We parked over on Evergreen about an hour, and finally a man driving a red pick-up came over to the trucks, and we followed him. That man was the defendant Mr. Weinstein. We followed him, and went up to City Terrace, on the corner of Wabash and Thornton, to a service station and repair place. We backed one truck in at a time, and loaded them. We did not drive both trucks up there simultaneously. We drove one up

(Testimony of C. A. Humbert.)

first, and the other followed up in a few minutes time. Max Cramer's truck went in first. Just a minute. I am getting a little mixed. I am not absolutely sure as to the one that went first. We loaded Max Cramer's truck first. I know that. I believe I went first, though. "We" are Max Cramer and myself. [130]

As to whether anyone else assisted me in loading the tires—Mr. Weinstein, Mr. Rose, and there was somebody there. I don't know who it was. Weinstein was there. Nobody else I see in the courtroom was there that I can remember, sir. The first truck was loaded, and left for its destination, and I stayed there and helped load my truck. The first truck was to go to the Washington Van & Storage in Los Angeles. The second truck was loaded. I was there when that took place. Somebody left with the first truck; Mr. Rose was still there with me on the second truck. I don't know whether Mr. Weinstein was there or not in the second loading. To load up the last truck took possibly a half an hour. Each truck was loaded half up. Half the tires went on one truck, and half on the other.

With respect to the truck I had at the end, it was pretty well filled up. Tires were loaded in there. They were wrapped tires. I couldn't say whether there were any tubes. The truck was to go to the second driveway west of Brooks Randall on Sunset Boulevard, and turn in there and wait. Mr. Rose said that to me. I did that.

(Testimony of C. A. Humbert.)

The first truck, that Cramer was driving was to go to the Washington Van & Storage. I couldn't say who said that, or who gave that direction. After I got out to Brooks Randall Mr. Rose was already there, and I pulled in, backed the truck in, and unloaded it. Mr. Rose and myself was all there were there. [131]

Exhibit 11 looks something like the location where I took this load of tires. This ringed part of the diagram is where I unloaded them. There were not any tires in there that I could see. There was no light in the room. We did not stack these tires in there the way we had the others. We just laid them, as those are standing now, in about four or five piles, clear out to the door; almost to the door. It was quite dark when we got through. It was late summer. Around 8:00 o'clock. Then I went back to my business, to my location. The other truck hadn't got in yet. I don't know what time it did return. I went home.

This invoice of the Bay Cities Transfer dated September 29, 1942, does not reflect the transaction I have just referred to. That is not the original. That is not the one made out for the job. I had a conversation with Mr. Rose about this invoice. That was made in the office a day or two after the tires were delivered there. My wife was present. Mr. Rose wanted to know if the OPA had called up. I told him no. He wanted to know if they had asked me where the tires went to, and I told him if they asked me I would have to tell them, so he wanted

(Testimony of C. A. Humbert.)

to know if I would tell them he took the truck from my office. I said I had to put the destination on my bill, where it was, and where I took it. Finally we made up that bill there with Mr. Foster's permission. This did not reflect the destination where I took the merchandise. I made it at Mr. Rose's request. [132]

(The Document was offered in evidence.)

This pink carbon invoice dated September 29th is one of my invoices with respect to this transaction on September 29, 1942. This carbon was made at the same time as the original. This white invoice is the original of the pink one.

(The documents referred to were received in evidence and marked government's Exhibit No. 18.)

With relation to the designation on that invoice of the character of the merchandise hauled—I put on "auto accessories." Mr. Rose asked me to do that the first trip, and as to the other trips I couldn't say. But I was told to put on "auto accessories" on the first one. This relates to the truck load that was taken by Mr. Cramer and driven away from the City Terrace address previous to my going to Hollywood. They were both trips; both trucks. There are two addresses there.

As to whether I had any other conversations with Mr. Rose other than this I have related, after the last two van loads were hauled—I can't recall any offhand. There have been quite a few conversa-

(Testimony of C. A. Humbert.)

tions, but I can't recall what he said. Mr. Rose was in several times to find out whether the OPA knew anything.

This white invoice from Bay Cities Express & Transfer, dated 8-2-42, is an invoice that bears on the first job—the Ontario job. There was some conversation with Mr. Rose came up over the name of “blank” here when it was finished [133] and I had him sign his own name, “Ben Rose.”

Mr. Norcop: We offer it in evidence.

Mr. Goodman: I object to it on the ground it is incompetent, irrelevant and immaterial.

(The document referred to was received in evidence and marked Government's Exhibit No. 19.)

Cross-Examination

By Mr. Angelillo:

As to the persons whom I saw at Ontario in connection with the loading or handling of the tires—the only two that I can identify were Mr. Weinstein and Mr. Rose. I can't identify anybody else, outside of the young couple that had the cars. I do not recall seeing the defendant Mr. Vitagliano here before I came to this courtroom today.

C. A. HUMBERT,

recalled as a witness by and on behalf of the Government, having been previously sworn, was examined and testified as follows:

Further Direct Examination

By Mr. Norcop:

When I was at Ontaria, I was told to cover the vans all good for fear of hijacking on the way. Mr. Rose told me that.

Cross-Examination

By Mr. Goodman:

At the time that I first learned that I was going to transport tires for Mr. Rose and I had a conversation with [134] him in that regard, he told me that all of the tires were registered with the Office of Price Administration. He told me that the tires were not stolen, and that it was a legal transaction.

On the occasion that I made the second trip or the second hauling for Mr. Rose to Pasadena, it is a fact that that was in broad daylight on Saturday. I can't say whether it was morning or afternoon. On that occasion, which was subsequently to the time I went to Ontario, I knew before going to Pasadena that I was going to haul tires and tubes. The second time, I knew it was tires. I suppose I knew when I went out on the second trip, before I got to my destination, where I was to pick up the new tires and tubes, that I was going to pick up new tires and tubes. I couldn't say. The third occasion was when I delivered them to Brooks Randall. At that time I figured they would be tires.

(Testimony of C. A. Humbert.)

As to whether anything was ever said to me by any one of the defendants after the first occasion as to what should be put down on any invoice, but that I followed the instructions given me on the first occasion and had written "automobile accessories"—on this third occasion, when I went out to the Brooks Randall Company, when I arrived at Brooks Randall it was just getting dark. Around 7:00 o'clock in the evening. It was September the 29th. I did not say it was dark when I got there. It was dark when we got through unloading. During the period of the day when it was light [135] I unloaded very little. By the time we got backed into the door it was just getting dark then. Maybe it was later than 7:00. I don't know the exact time. The rear of my trucks were covered with tarpaulin. They were not paneled. These tires were all inside completely covered up. Except the first occasion, we had furniture pads over the tires to hide them, under Mr. Rose's orders. The reason he gave me was that they might be hijacked. Mr. Rose was the only defendant who hired these trucks from me. He is the only one that paid me. I had no business transactions with the other defendants in this case. Not a bit; no.

I was contacted by a representative of the Office of Price Administration after these deliveries, and before the third delivery. When I made the third delivery, the one to Brooks Randall Company, I had already spoken to the representative of the Office of Price Administration. That was Mr. Foster. I

(Testimony of C. A. Humbert.)

had told him on that occasion that I had transported tires for Mr. Rose from Ontario to a place on Virgil, 613. The first time he came out I didn't know he was going to make another delivery. I was told by Mr. Foster if I was asked to go ahead and make it. He told me to make it.

MRS. JOSEPHINE HUMBERT,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows: [136]

Direct Examination

By Mr. Norcop:

I am the wife of Mr. C. A. Humbert. I was working in my husband's business at 4428 Melrose Avenue in August 1942. I know Mr. Rose. He came there the Saturday before—Friday before August the 2nd, or I should say about seven days before August the 2nd. I saw him on August the 2nd out at Ontario. At Ontario I saw Mr. and Mrs. Kelber, and Mr. Rose. I couldn't place any of the others right now. The only conversation I had with Mr. Rose at the time was he wanted to hire a van, two vans. That was back here in Los Angeles. At Ontario I did not have any conversation with Mr. Rose at all. I came on in with my husband that day. I did not see Mr. Rose in my office again until the Friday before the 22nd of August. At that

(Testimony of Mrs. Josephine Humbert.)

time he wanted me to give Mr. Humbert a message. The words, "To have him call at his home in the evening between 7:00 and 8:00 o'clock." I saw him the next day but I didn't have any talk with him. After that, not until towards the end of September. I know that they came in on September 29th and wanted two vans. I was there then. The persons I refer to are Mr. Rose and the gentleman back there with the mustache, and this gentleman with the light coat on, light suit on. (Indicating Mr. Mac R. Brown.) (Mr. Brown stood up.) That is one of them. I don't know them by name. And this man at the end of this table here. (Indicating Mr. Vitagliano.) (Mr. Vitagliano stood up.) That is the man I am referring to. That was on the 29th of September. I [137] I couldn't remember if there was anybody else or not, but I do specifically remember Mr. Rose and the gentleman over there. They asked for two vans and wanted them around 5:00 o'clock in the afternoon to go over at Brooklyn and Evergreen, were the orders that were given to me. In my presence, Mr. Rose and I can't remember who he directed his answers to, who he talked to, but he said that they should not make the same mistake that they had previously made of loading both vans at the same time; that they should load one van at a time. I was present, and Mr.—I don't know his name, but the gentleman back there and the other one that was with him. The two I have just now previously identified.

(Testimony of Mrs. Josephine Humbert.)

Mr. Angelillo: Let us have some better identification, if your Honor please.

Mr. Norcop: All right. Heretofore they were identified as Mr. Brown and Mr. Vitagliano.

Q. Are those the two men who stood up a while ago?
A. That is right.

(By the Witness:)

They left and came back around 5:00 o'clock and they gave the directions to Mr. Humbert in my presence. Those directions were to go to Brooklyn and Evergreen.

Cross-Examination

By Mr. Goodman:

I am positive that Mr. Vitagliano was present there on this September the 29th. At the time that this conversa- [138] tion that I spoke of in which Mr. Rose said, "We should not make the same mistake of loading both vans at the same time; between 2:00 and 3:00 o'clock in the afternoon. He was there at that time. Rose was talking to both Mr. Brown and Mr. Vitagliano. I was in the front office of my building there. I was alone. These three gentlemen and I. I was sitting at the sewing machine. I don't know what, if anything, Mr. Vitagliano [138-a] answered to Mr. Rose. I didn't hear. I was closer to them than you are right now. I did hear the statement Mr. Rose made. I couldn't say whether or not Mr. Vitagliano answered Mr. Rose, as I can't remember the voices, but I do remember Mr. Rose. I can't remember whether Mr.

(Testimony of Mrs. Josephine Humbert.)

Brown answered Mr. Rose. I don't know whether they said anything.

Cross-Examination

By Mr. Angelillo:

The first occasion that I saw Mr. Vitagliano, so far as my knowledge is concerned, is the 29th of September. I did not see him at Ontario. I can't remember. I cannot tell you how he was dressed on the 29th day of September. He did not introduce himself to me. I didn't hear him say anything. I couldn't say how long he was in my presence. I cannot give you an approximation of the time he was in my presence. It might have been five minutes; it might have been fifteen minutes. He did not use the telephone at my office. The only man that used the telephone was Mr. Rose. I did not hear Mr. Rose call him by any name. From that time, that is, September 29, until this date, when I came into court, I have never seen this gentleman in the interim. I have never seen him since. I couldn't say whether he was dressed in the manner in which he is now here. I was busy in the office, and I did not take notice of how they were dressed. I couldn't say whether or not he wore glasses. I describe him as a stocky man, not particularly tall, receding hairline. That's [139] about all I can say. I could be mistaken about that person's identification, but he does look like the man that was in the office that day. I may be mistaken on that one. Not the other one. Mr. Vitagliano fits the description I just gave you. But I am not sure about it. Not positive.

REUBEN SLAVETT,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

My business is the tire business. Located in Pasadena, 1850 East Colorado Street. I have been engaged in business at that address 12 years. I know Mr. Weinstein. I first met Mr. Weinstein at a service station on Mission Road, in Los Angeles. The name of the station is The Three Jacks. That was during the month of August, 1942. I had a conversation with him then. There were other people present, but I don't know what they heard of it. There were about three or four fellows on the property, and one was Sy Kirsh, and Sam Rippan. I don't know whether they heard the conversation or not. We all were standing talking to one of these fellows, on the service station premises, and Mr. Weinstein drove over with someone else at that time. I don't know what his name was, or who he was. While I was talking with the other fellow he came over and joined in the conversation; just [140] talking generally, and while we were talking it came out that I had some new tires and tubes which I was interested in selling, and he mentioned to me that he possibly could get a buyer for me. I told him what sizes I had, and the amounts, and the makes of the tires, and the price I wanted for them, and he made arrangements with me to meet a man

(Testimony of Reuben Slavett.)

at a later time, to meet the buyer, the prospective buyer. On a later occasion I met Mr. Weinstein down town in Los Angeles. We went out to get in touch with the man that later turned out to be Mr. Rose. At that time I did not know who he was. We went first to his service station on Olympic and Hill, and he wasn't there, so we went to another station. he has on West Sixth Street, and he also wasn't there, and his brother told us that he wasn't there either; and then Mr. Weinstein called. Where he called I don't know. And we met Mr. Rose later on around the vicinity of Third and Vermont, in Los Angeles. No one was with Mr. Rose, or anyone else with Mr. Weinstein and I when I met him. There was just the three.

Mr. Weinstein drove up there with me, in my car, and met Rose on the corner of the vicinity around Third and Vermont, and he got in my car, and the three of us had a discussion about the purchase of the tires. I told Mr. Rose—previously Mr. Weinstein and I had arranged at a price to ask him, and I told Mr. Weinstein that I wanted \$3,000 for my merchandise; that anything above that he could have as [141] his commission, but I wanted \$3,000. That was all I was interested in getting. So Mr. Rose and Mr. Weinstein and myself were sitting in the car, and I told Mr. Rose that I wanted \$3300 for the merchandise, and he offered me \$3000, and I said "No, \$3300 is the price." Then Mr. Rose and Mr. Weinstein got out of the car, and walked up the street. I sat in the car. And they were talking

(Testimony of Reuben Slavett.)

over the deal. Mr. Weinstein was trying to close it with him, and then they both came back, and got in the car, and Mr. Weinstein was nudging me not to come down in price; that I could get \$3300. He did not say anything, but he nudged me to let me know that I should not come down. Mr. Rose still offered \$3000. I figured I wanted to sell the merchandise; I did not want it on my hands. I said, "I will split the difference, and make it \$3150." So Mr. Rose still insisted on \$3000, and I intended in my own mind to give Mr. Weinstein \$100 off of my \$3000 price, and I would receive \$2900, and I would give him \$250 as his commission, as I was the one who dropped the price.

Then we left. Mr. Weinstein went with me, and Mr. Rose went off by himself. Mr. Weinstein and I saw Mr. Rose later in the day at his gas station. The deal was finished there for \$3150.00, and he gave me a deposit of \$200 in the form of a personal check. The merchandise was supposed to be picked up Sunday morning, at my place of business. The time set was 8:00 o'clock in the morning. I got there late, [142] at 8:30, and when I got there there was a note on the door, by Mr. Rose—It stated that he was there at 7:30; that no one was there, and he had to be at some place else at a certain time, since the trucks were going there. I did not understand clearly about that. Anyway he had to be with the truck at a certain place, at a certain time, and therefore he had to leave before I got there.

(Testimony of Reuben Slavett.)

Ben Rose's name was on the note. I hung around the place. I did not know what to make of the thing. Mr. Weinstein then drove up. I told Mr. Weinstein what happened that morning. He did not seem to understand; neither did I. And he said, "Let's go and phone, and find out." We went across the street to a telephone booth, and after making a few calls, he wasn't able to locate him, and the third time he located him. I had a conversation with Weinstein after that. The story was the same as he mentioned, that the truck had to be somewhere at a certain time, and therefore he couldn't wait. Nothing happened of moment that day. I heard from Weinstein the next day. After that Weinstein was going to see Rose about it, and I went down to see Mr. Rose. The next morning, I remember, I went down to see Rose, to find out why the deal was all off. I was alone. I had a conversation with him, and he told me the deal was all off. He did not want any part of the deal, as long as Mr. Weinstein was in it. He told me he did not want the deal. Later I saw Mr. Weinstein and he told me that he had another prospective buyer. [143] He told me he had another prospective buyer, and I met him, and we went to this place at 12th and Stanford, and there I was introduced to Mr. Vitagliano. I see Mr. Vitagliano in court. I had not known him before. A few minutes later another man approached, so Mr. Vitagliano introduced me to this fellow as the prospective buyer, and I spoke to him. We both went aside, and I spoke

(Testimony of Reuben Slavett.)

to him about the sizes and prices, and everything. I don't know what the name of the man was that I was introduced to. He is not in court so far as I know. I told this fellow—I don't know whether Mr. Vitagliano or Mr. Weinstein heard all of the conversation. They may have heard it. Or different parts of it. I don't know if they were present throughout the whole time. They were not participating in the conversation. After I was introduced, they did not participate. Later they participated again.

I mentioned to the prospective buyer, in order to make the sale complete I wanted to have the papers, the sales tax number, and I wanted to make sure the place of business existed, and I was not selling to somebody who actually was not even in the business. So this prospective buyer assured me it was, and also Mr. Vitagliano tried to assure me it was all right. Still I wasn't satisfied. I wanted to make an appointment to meet this party at his place of business. That was what I said to the man. I wanted to meet him that afternoon at his place of business. He said "Well, you better [144] not go there now. I have other business to attend to. I don't want you to go and disturb the men." I said, "How about tomorrow morning at 10:00 o'clock, before they pick up the merchandise?" He said, "O. K. 10:00 o'clock." I got a \$50 deposit from the prospective buyer, and told him also I still had the check of Mr. Rose, and my receipt for the

(Testimony of Reuben Slavett.)

merchandise, and before the deal would be final I would have to give him the check back, and get my receipt back.

The prospective buyer told me his place of business was on San Fernando Road, in Glendale. That deal did not go through. The next day I received a phone call from Mr. Weinstein telling me that the deal was all off. I went back to the station to return their money. I don't remember for sure who I gave the money back to, but I know the money was given back. After this deal was off, the second deal was off, I went back to Mr. Rose, and told him that the other deal was off, and if he wants to he could have the deal. No one was with me when I went back to Rose. He accepted the deal. The deal was then \$2900. He said he would take care of Mr. Weinstein for his commission, and I would realize \$2900 out of it. He gave me a deposit. He had a cashier's check in his pocket for \$2750 made out to me.

The time I saw Mr. Vitagliano again was when Mr. Rose came the next day to pick the merchandise up. Mr. Rose came to my place of business in Pasadena. Mr. Rose was present, [145] Mr. Weinstein, and Mr. Vitagliano, and the truck driver. All the merchandise was taken out of the racks and stacked up right in the driveway, and checked over. It was all put in the truck, and the truck drove off, and I said to Mr. Rose "How about my other \$150, I have got coming from the balance" which he did not give me yet. He told me to forget about

(Testimony of Reuben Slavett.)

it that I made enough money on the deal. I got around there with him, and I told him it didn't make any difference what I paid for the stuff, but that deal was made, and I was supposed to get that much. So he tried to give me \$75, and I did not accept it. I persisted in getting my \$150, which I had coming; and in the middle Vitagliano would butt in once in a while, and say that was all the deal was made for.

Mr. Rose and Mr. Weinstein were getting ready to drive off, and I yet hadn't the \$150, and I went to the car and up to Rose, and talked it over some more. So finally he settled for \$75, and he said he may give me the other \$75 sometime. So he gave me a check for \$75. After Mr. Rose and Vitagliano drove off Mr. Weinstein remained, and said, how about his cut, or his commission. I said, "Since the deal turned out so poorly, I really shouldn't give you anything at all, but I will give you \$25 anyway," which I gave him in cash.

These three sheets of invoices of the Dandy Tire Company, dated August 22, 1942, are the invoices that I made, representing the transaction I just described. I made out three in- [146] dividual copies. The copy I have, and I gave one to Mr. Rose, and this one to the investigators. Mr. Rose signed the invoices. This writing on the three pages is his. That was in my presence. The permit, retail sales number, was put on there in my presence. I also have the retail sales card here too,

(Testimony of Reuben Slavett.)

that was at the same time made out. He made that out at the time of the sale.

(The document referred to was received in evidence and marked Government's Exhibit No. 20.)

I had some conversation with Mr. Rose after this transaction had been completed. He mentioned to me if I knew anybody else that had new tires to sell to get in touch with him, and he would see to it that I got something out of it.

Cross-Examination

By Mr. Goodman:

I investigated to determine whether or not Mr. Rose was a legal retailer before I made the sale. I knew that he operated one or more stations in the City of Los Angeles where he had been selling new tires and tubes. I knew that he operated this one station and parking lot combination, and the one parking lot, that is all I knew of. He exhibited to me his retail sales license. I had communicated with the Office of Price Administration before I made the sale to find out if I could make the sale. I called up the Office, the OPA office, and asked what is the proper procedure in selling [147] new tires. They told me, and I followed that procedure. That is the way I made the sale to Mr. Rose. I did not tell them when I called that I was going to make the sale to Mr. Rose. They did not ask me and I did not mention any name. They told me to make three copies of the invoices, and to be sure that the

(Testimony of Reuben Slavett.)

purchaser was a retailer and in business. The tires were delivered to Mr. Rose on a Saturday. He picked them up on Saturday. I was there to see that he got his tires. It was around noon, maybe an hour before. Besides myself and Mr. Rose there was present Mr. Vitagliano, Mr. Weinstein, and the truck driver. I never saw Mr. Mac Brown there. I never had any contact with Mr. Mac Brown at all during this entire transaction. There were 212 new tires, and 798 new tubes.

In addition to the documents which have been introduced in evidence by Government counsel, it is a fact that I also had a separate invoice in which the total number of tires and tubes were reflected, showing the purchase price to be \$2,900.00, and stating thereon that it was for resale purposes and listing the permit number of Mr. Rose. Subsequent to the making of this sale a representative of the Office of Price Administration did not check my records to check on this particular sale. My records were checked about February, the merchandise was checked by an OPA man. After that sale was made, when he was investigating the case he was there. They have been examined. At that time I gave [148] them a copy of the invoice. Upon the sale of these tires and tubes to Mr. Rose, that practically liquidated all my tires and tubes that I had at that time.

(Testimony of Reuben Slavett.)

Cross-Examination

By Mr. Angelillo:

I am acquainted with Mr. Soukesian, on North Broadway, doing business as the North Broadway Radiator & Tire Company. I never tried to buy his stock. I tried to sell his stock for him. I was negotiating with Ben Rose only.

On the occasion that I met Mr. Vitagliano for the first time at 12th and Stanford Streets I did not ask him whether or not he wanted to buy my stock. He wasn't the one who was supposed to buy it. I did not ask him. He was not to be the purchaser. Before I got there I was with Mr. Sam Weinstein. He drove over there with me. As to whether on that occasion it was prearranged that I would meet a third party through Mr. Vitagliano—there was no prearrangement as far as I. All I know, that Mr. Weinstein was taking me to a prospective buyer. Who or where or anything I didn't know until I got there. As to whether Mr. Weinstein told me that he had a friend by the name of Louis, meaning Mr. Vitagliano, and that Louis had a friend who wanted to buy Mr. Vitagliano's stock but he would not sell it, and he would turn the purchaser over to Mr. Weinstein—I don't recall anything like that being said. All I know is that Mr. Weinstein and I went to 12th and Stanford, Mr. Vitagliano's place of business. [149] There I was introduced to Mr. Vitagliano, who, in turn, introduced me to somebody else, and that was all I know. I don't know the man's name. No deal was there.

(Testimony of Reuben Slavett.)

As to whether on the next occasion when I saw Mr. Vitagliano and Mr. Weinstein had already been with me; and as to whether he was with me on a particular morning when I saw Mr. Rose and he picked up Mr. Vitagliano some place—Mr. Vitagliano came along; that is all I know. He did not partake in any of these negotiations, except to probably interject some remark, “to get it over with.” That is all it appeared to me. In other words, he was getting tired of hearing we two argue or barter.

Further Cross-Examination

By Mr. Goodman:

After I made the sale to Mr. Rose I closed down my stations soon thereafter. I closed the place. I own the property there and I just closed the gates and no business.

In this transaction I did not have any dealings with nor were the names of Mr. Mac R. Brown, or Joseph Lieb ever mentioned.

J. C. COOLEY,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop: [150]

My occupation is photographic work. I have been engaged in that profession 22 years where I am now—at 716 North Western Avenue. In Octo-

(Testimony of J. C. Cooley.)

ber of 1942 I went to 613 North Virgil Street. I made photographs of the interior there. I have the negatives that I took. I don't know the date of that work I did there, but it was along just about that date. I was there only once. It was a Saturday afternoon. These prints are reproductions from the plates that I have with me. I think those two are duplicates. There are three different pictures. They are unretouched negatives.

(The photographs referred to were received in evidence and marked Government's Exhibit No. 21.)

Cross-Examination

By Mr. Goodman:

When I got to the premises—when I took this picture, three gentlemen were there. One is in the courtroom.

(Stipulated that Mr. Foster was indicated.)

I don't remember anyone else. I don't believe there were police officers there. The place was open when I got there. The door was open.

Q. I call your particular attention to this pile of paper in the front of the picture and ask you if that pile was in that condition when you first came into the place?

A. There was practically in this—they were made from two or three different views. [151]

Q. Yes.

A. There might have been piled up a little bit, but there is nothing taken in or out of the building.

(Testimony of J. C. Cooley.)

Q. Isn't it a fact that one or more of the men that were there on that day took these papers together and made a pile out of them?

A. They might have done it once, at my suggestion, to get it in the picture.

Q. Well, was it done?

A. That is long, quite a while ago.

Q. By the Court: Do you remember?

A. It might have been in one of them. I don't know. But I am sure the first—or some of them. That is probable why we made two or three different ones.

Q. By Mr. Goodman: In other words, the pictures do not reflect the condition of the premises as they were when the parties first entered into them?

Mr. Norcop: I will object to that.

A. They were first—they were——

Mr. Norcop: I will object to that.

The Court: Just a moment. If this witness knows.

Mr. Norcop: Yes.

A. I would say it represents the way it was when I came in, just merely arranging, the same thing, that is, the principal that was photographed, anything that shows in there was in there. [152]

Q. By Mr. Goodman: All right. In other words, by your answer you want the court and jury to understand that, so far as the tires and the boxes which are piles in the rear, as indicated on this photograph, they were not moved; that is a fair and

(Testimony of J. C. Cooley.)

true representation of the condition of the room; but, so far as the papers are concerned, which were scattered around the room, they were heaped together, were they not, by a representative of the Office of Price Administration, and put in a pile, which pile is now reflected in this picture marked Exhibit 21 of the Government?

A. This one might have been. These are different views, of course. They——

Q. Will you answer my question?

Q. By the Court: Mr. Witness, were those newspapers arranged while you were there so that they would show up in the photograph more than they were in their original condition?

A. It might have been the one, the last one.

Q. By Mr. Goodman: When you say “last one,” may we——

A. That would be that one; yes.

Mr. Goodman: May we have this photograph marked some way as to distinguish it from the others?

The Witness: I am not positive after that length of time.

Mr. Goodman: It is marked 21. May we have it marked 21-A?

The Clerk: Yes. [153]

(The photograph referred to was received in evidence and marked Government's Exhibit No. 21-A.)

Q. By Mr. Goodman: And isn't it a fact, Mr.

(Testimony of J. C. Cooley.)

Cooley, that the empty boxes that were scattered around the room were also brought together and thrown into the same pile, as shown in this Exhibit 21-A?

Mr. Norcop: If you know?

Mr. Goodman: If you know?

A. I don't. I don't remember about that part.

Q. All right. Can you tell the court and jury which photograph you took first?

A. That would be difficult. I had no idea I would be a witness at the time. I just went over to make the photographs of these tires, and the only thing that I really remember is the searchlight, spotlight probably put up there, so I would say now that is the only thing that I do remember.

Q. Mr. Cooley, to refresh your memory, if you examine these photographs, and calling particular attention to the one that I now have in my hand, in which the rubbish and the paper and the boxes are not accumulated in the center, doesn't that refresh your memory that that is the first photograph you took?

A. Not necessarily. I understand this is—you can see this is a different view, because these boxes with the Canyon tires on doesn't show at all in that view. [153-a]

Q. Were you given any instructions by anyone present at the time as to how you were to take these pictures and what you were to emphasize your photograph upon?

(Testimony of J. C. Cooley.)

A. No; not at all, because we had to get back in the door to get room. They practically filled the room.

Q. Weren't you told that you were to get the pile of paper and empty boxes into this photograph?

A. Do you want me to answer that?

Q. Yes; that is what I asked you.

A. All right. I said that was probably evidence that there had been plenty of other tires in there and they wanted to show that photograph——

Q. Now you are giving me the reasons, and I merely asked you if someone had not instructed you to get this pile in? A. Why, I imagine so.

Q. All right. And wasn't that gentleman who gave you those instructions Mr. Foster, the gentleman you previously identified?

A. He was the gentleman that asked me to come over and make them.

Q. Yes. He is the gentleman that called you in to take the photographs and he is the gentleman that instructed you to take the picture, to bring out this pile of paper consisting of the boxes and the papers off the tires?

A. To show a true picture of the interior of that room [153-b] as I could.

The Court: Let me ask a question.

Q. You did not bring in any of those wrappings from any other room, did you? A. No, sir.

Q. They were all in that room?

A. No, sir; there was just one room. There was nothing in or out.

SAM PARSNER,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norecop:

My business is tire business, 524 West Pico. I have been in business at that location about a little better than nine years. My business is tires, and recapping. Now, used and retreading. I know Mac R. Brown. I first became acquainted with Mac R. Brown the day of our transaction in September. I sold him some tires September the 9th, 1942. I met him [153-c] the same day. He came into the store and wanted to know if I had anything to sell. I told him I didn't. He asked me if I had any new tires. I told him I did; I had put them away when they were first froze. Vitagliano was with him. (Indicating defendant Vitagliano.) That is all. I sold him all I had, 38 tires. The vehicle they had when they took delivery was a red panel. I don't know whether it was a Chevrolet or an International, one of the two. I do not recall any wording on the truck. We have an invoice for what I received for the tires. That is our invoice.

(The invoice referred to was received in evidence and marked Government's Exhibit No. 22.)

As to the conversations I had with these gentlemen when they bought my tires—there wasn't much to it, merely I told them I would have to find out

(Testimony of Sam Parsner.)

if I could sell them to them, and they said for me to get in touch with the OPA, which I did; and Mrs. Parsner called the OPA and she got in touch with a young lady and she turned her over to someone else, and finally got the third party and phoned to her, and she said it was O. K. to go ahead and sell. We checked with them. He said he had a station on Sunset Boulevard and we checked him with the Signal Oil Company and we checked the station to get the stamp number of his resale permit, checked it back and forth. And we sold him the tires. That was all there was to it. [154]

Cross Examination

By Mr. Goodman:

Mr. Weinstein didn't buy anything from me outside of the truck, about a month before that. The only man in connection with the sale of these 38 tires was Mr. Mac Brown. I had no business with Mr. Benjamin Rose. Mr. Vitagliano helped him load. Outside of that helping him load, that is all he had to do with reference to the transaction that I remember. Mr. Brown paid us the money. When I sold the 38 tires, that is all I had. I had some tubes, and they were supposed to buy them, but they didn't. We made four copies of the invoice because the OPA told us to make an extra copy for them for the record. We got the resale permit of Mr. Brown. He signed a card to that effect, but before we released the tires we checked the station and asked the attendant at the station to repeat the number

(Testimony of Sam Parsner.)

to us and also describe Mr. Brown as a retailer. I found that he certainly had a station. The tires were delivered to him during the day, broad daylight. It had happened to be on the 9th.

Cross Examination

By Mr. Angelillo:

There wasn't any name on the truck that I can remember. The name "California Provision Company" does sound familiar. It was a red truck. I couldn't say whether Mr. Vitagliano was the driver of that truck. I can't remember whether he [155] drove it. I know he helped us get the tires out of the room and load the truck. Whether he had a conversation with me on that day I don't remember having anything—We were talking about nothing pertaining to tires, I don't think. He did not tell me he had a station down at 12th and Stanford. He did not tell me he had a station. He didn't tell me why he was there. He didn't tell me that the reason why he was driving this truck was because he was covered by insurance for any truck that was brought on to his premises, and these were old clients of his that he was servicing their truck. If he did, I don't remember it. He did not say that he wanted to do business in a hurry, that his load was—nothing like that, just straight legitimate business the way it looked to me. It didn't look to me that he wanted them put on the truck in a hurry so he could take them over to Sunset Boulevard. We just went up in the room and loaded it, took

(Testimony of Sam Parsner.)

our time; in fact, I was prepared to call the bank in case he gave me a check, to see the check was all right. There were three of us went upstairs, that is, Mr. Brown, myself and Mr. Vitagliano, and then we threw some tires down and Mr. Vitagliano went downstairs and loaded them, if I remember right.

As to whether I don't have any too clear of a recollection, at this time about how soon he started to help—naturally, I didn't keep—I didn't have a watch in front of me. He was wearing service station clothes. Such as an [156] ordinary service station man would wear. Whether he drove the truck away, I couldn't say. I don't remember. I couldn't say he drove the truck away.

Redirect Examination

By Mr. Norcop:

This invoice is in Mrs. Parsner's handwriting.

(The government then called Mrs. Parsner; before she was sworn Mr. Goodman asked if she was called only to verify that the invoice referred to by Mr. Parsner was in fact in her handwriting. Mr. Norcop stated that in addition it was intended to show by her testimony that she made out the invoice and placed on it the license number of the truck. Mr. Sullivan stated that he had no objection. Mr. Goodman stated, "You can offer it into evidence without any further objection and we won't object to it, so you won't have to call her." Mrs. Parsner was then excused.)

JACK FOSTER,

recalled as a witness by and on behalf of the Government, having been previously sworn, was examined and testified further as follows:

Further Direct Examination

By Mr. Norcop:

Subsequent to the 9th of September, 1942, when Mr. [157] Parsner sold his tires to Mr. Brown, I had a conversation with Mr. Brown respecting that invoice of Mr. Parsner's. That conversation was at 2824 Sunset Boulevard, Mr. Brown's place of business—Rappan Service. Besides Mr. Brown and I there was another man present, that is, he was on the lot, but he was not in listening to me at that particular moment, and another investigator by the name of Donald Harwood of the OPA. I asked Mr. Brown if he had purchased Mr. Parsner's tires and Mr. Brown stated that he didn't want to say whether he had or not. And then, after questioning him for some length of time, he said that—I told him that I had seen the bill or showed it to him, and he said, "Well it doesn't have my signature on it." So I told him I didn't care to [157-a] argue over that fact. I want to know if he had bought the tires that he said he had. I asked him where the tires were and he said he had sold them. I asked him who he had sold them to and he told me that he didn't remember the name, but he would produce the invoice; that he didn't have it at that time and if I would come back the next day, why, he would show me the invoice. On the following day I went back to see Mr. Brown and Mr. Brown showed

(Testimony of Jack Foster.)

me an invoice of which he gave me a copy. It had "T & M Tire Service, 1620 South Broadway." That is the copy he gave me.

(The document referred to was received in evidence and marked Government's Exhibit No. 23.)

As to whether on that occasion, that is, either the day I first spoke to Mr. Brown there at 2824 Sunset, or the next day, when he gave me this invoice, I ascertained whether he had any new tires in his station—he had four or five new tires that had been there for some length of time. On the last occasion when I picked this up I asked Mr. Brown whether any of these tires were the same tires, and he told me they were not; that these tires had been there for a long time, and he wiped his hand across the dust to show me that they had been there for some length of time; and these tires were in the lube rack in the rear, if I remember correctly, a double rack, where Mr. Brown would ordinarily put his tires.

Cross Examination

By Mr. Sullivan:

When I first went to Mr. Brown's place of business and [158] I asked him if he had purchased the Parsner tires, he told me that he did; in substance I testified to that; but he didn't care to state to me whether he had or had not bought the tires of Mr. Parsner. In substance that is what I testified to. Then I stated I had a conversation with Mr. Brown,

(Testimony of Jack Foster.)

and I showed him the invoice which I had in my possession, and which indicated that I knew about the Parsner sale. Then I asked Mr. Brown and Mr. Brown told me that he would give me an invoice if I came back the following day. That was to show me how he had disposed of the tires, and to whom. When I came back the second day, to get the invoice, he gave me the invoice which is here in evidence. As a matter of fact, when I first appeared at the Brown place of business, and I was told to come back the second day with the invoice, I did not talk to Brown at all. No, I talked to his helper on the first day, but the second day I went there I talked to Brown. The third day I got the invoice from Brown. I did not talk to his helper regarding it at all. His helper knew nothing about it; had not seen any tires. I talked to Brown, and Brown told me the next day to come back and get the invoice. And I got the invoice.

FRANK MONTGOMERY

called as a witness by and on behalf of the Government, having been previously sworn, was examined and testified further as follows: [159]

Direct Examination

By Mr. Norcop:

My employment at the present time is at Douglas Aircraft. I have been working for Douglas one year. Prior to May 1st 1942, I was proprietor of

(Testimony of Frank Montgomery.)

the T & M Tire Service, 1620 South Broadway. I went into business there in the early part of 1942, and was in about 11 months. In the year previous to my going to work for Douglas I discontinued it from March 1, 1942. I had a truck in that business, a '37 Ford pick-up. I sold it May 27 of last year. I have not had anything to do with that truck since. I have been out of the tire business since the first of March, 1942.

As to Government's Exhibit No. 23—I have never seen it before. I don't know Mac R. Brown. Just from the evidence submitted in court here, I picked him out. I have not had any acquaintance with him. I did not buy any tires from Mac R. Brown at any time. This is my wrong sales number. My sales number is not AA 17452. My sales number is AA 89008. I still have it. I did not have anybody employed by me at any time by the name of Jack Briffit. I did not buy any tires of this description after I went out of business. I was in the used tire business; not new tires. I handled new tires just on consignment, that was all, but not these.

Cross Examination

By Mr. Goodman:

I did have a couple of employees working for me. [160] One is named Frank Chamblin. He was mostly doing piecework. My partner and I operated the business. The other man employed by me was my brother. Nobody other than my own relatives worked for me. My partner's name was Elmer Turnquist.

(Testimony of Frank Montgomery.)

Redirect Examination

By Mr. Norcop:

Mr. Turnquist was working for the Firestone Tire & Rubber Company, but we had dissolved partnership about three months previous to that, so the business was all in my name. The business was mine three months before the first of March, '42.

Recross Examination

By Mr. Sullivan:

My partner was not using that firm name, T & M Tire Company. I am positive he was not. It stands for Turnquist and Montgomery. No one else is using that firm name to my knowledge. I don't know anything about any one that might use that name of T & M Tire Service, for the purpose of buying tires. There has not been more than one occasion for the T & M Tire Service Company to buy any tires. As I said before, we never handled new tires. We just hold them on consignment from the oil company. This is the only time that it has come to my attention that the firm name of T & M Tire Service Company has been used in regard to the purchase of tires. That's all that ever came to my attention—just the incident here, that has been testified to. [161]

HENRY IMMERMANN,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

My business is the piano business at 246 West 87th Street, Los Angeles. I have been engaged in that business about 30 years. In connection with my business here I have a sales tax number with the State of California. This is my permit. (Referring to a document produced by the witness.) That's AA 17452. As to Government's Exhibit No. 23, the second to the last line on the document, I find my retail sales tax number on there. It's exactly the same. I have never had any dealing in buying new tires. I never drove a machine.

JAMES B. GRAHAM

called as a witness on behalf of the Government, after being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

Before I went into service my employment was General Manager of the California Provision Company, 1119 East 12th Street, in Los Angeles. I know just one of the defendants in this case—Louis Vitagliano. I have known Mr. Vitagliano about 8

(Testimony of James B. Graham.)

or 10 years. From the California Provision Company, to his place of business, at 12th and Stanford, it was one [162] block. I loaned him trucks several times. It was common practice to loan him trucks occasionally. I don't remember the license numbers of any of those trucks now. That is my signature and I wrote that letter. Refreshing my recollection from this letter; I loaned it to Mr. Vitagliano on September 9, 1942; license No. PC-R-5363; International Truck. I recall having a conversation with Louis Vitagliano before I loaned him that truck. He came into the general office, and asked to borrow a truck, as he had several times before. He asked to borrow a truck. I loaned it to him, because there was nothing wrong with it. He mentioned something, as I remember, about hauling oil.

Cross Examination

By Mr. Angelillo:

As to whether I am definite about the date, September 9th—at the time I wrote this statement, it was on September 14th, just 5 days after the occurrence occurred. As to whether I know whether he borrowed the truck in question on September 29th—it is too long a time since then. I wouldn't say.

Prior to rationing, or prior to 1941, Mr. Vitagliano had borrowed that truck on a number of occasions. He borrowed it in 1942 on a number of occasions. He serviced our equipment out there. And he had done so for some years last past. I think about 6 or 7 years altogether. On some occa-

(Testimony of James B. Graham.)

sions prior to this particular incident I had known of my own knowledge that he had hauled motor oil used for automobiles, [163] and brought it to his place of business, or to other places of business. I did not hesitate to loan him a truck any time he asked for it. I had seen oil on that truck.

As to whether I have any particular recollection about this particular occurrence that he said he was going to haul oil, or whether it is just my assumption because he had hauled oil before this occasion—it may possibly have been an assumption, but whether the subject of oil was mentioned at the time, I don't know. We had quite a few conversations in regard to our business dealings at the time.

Prior to this particular occasion, and during the time that he would borrow that truck, I knew that he personally was insured; that is, he had insurance, no matter where he drove that truck, as long as he drove the truck. He had previously told me that.

PAUL B. PARMELEE,

called as a witness on behalf of the Government, after being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

I am working at the Miles Transfer Company, transfer business. Before that, I was doing the

(Testimony of Paul B. Parmelee.)

same thing for the Bay Cities Transfer Company. In the middle of the summer of 1942, I was employed by the Bay Cities, the Humberts. I don't believe I know who the defendants are. I do not know Mr. Rose by that name. I know the man in uniform by [164] the name of Sam Blank. As to who else I know, of the people over there—I can't say that I know any of them. On August 1, 1942, while I was working for the Humberts, I did go with one of the trucks to Ontario. The other truck driver that went was Sam Dowden. I know the gentleman who just came back into Court here. I don't know him by name, but I believe I do; I believe I have seen him before. Before I left Los Angeles to go to Ontario, we were given an address on a slip of paper to go to 501 East 5th Street, Ontario. That is where I went to. I found a private residence there. I see persons in Court that were there on that occasion. I saw Sam Blank, and I believe this gentleman here.

Mr. Angelillo: Indicating Mr. Vitagliano?

By the Witness: That's right. I do not know his name. I also saw Mr. and Mrs. Humbert out there, and the other truck driver, Sam Dowden, and several other people that I don't seem to recognize, if they are here. Mr. and Mrs. Humbert were there when I arrived and the other truck driver. We got there together. We backed up to a double garage and proceeded to load two van loads of tires and tubes. There was some con-

(Testimony of Paul B. Parmelee.)

versation between Mr. Blank, and somebody else there, but not that I remember. There was not any conversation on the part of Mr. Vitagliano that I remember. As to what Mr. Blank did out there—we all pitched in and loaded these tires. The other man helped also. The Humbers stayed until we had finished. As to Exhibit No. 19—I [165] couldn't swear that that is the one. My signature, and the other truck driver's are down here at the bottom. I find my signature on there at the bottom. The date of this is August 2. (Document produced.) I believe this document is one of the documents that I had with me on that trip. I had the load weighed on a public scale enroute to Los Angeles from Ontario. It was west of Puente. I don't know exactly the name of the place. I know where the scales are. This weight slip was not received by me after the load had been weighed.

(The document referred to was marked Government Exhibit No. 24 for identification.)

Cross Examination

By Mr. Goodman:

I saw the invoices for the delivery of these cars that I delivered from Ontario to the place on Virgil Street. I saw who signed for the delivery of those cars. It was the gentleman in uniform here to your rear. I did not have the ticket at the time that it was signed. I saw it subsequently. Government's Exhibit No. 17 is not one of the exhibits that I saw. I did not make that

(Testimony of Paul B. Parmelee.)

trip designated on this exhibit. I never had anything to do with that trip. As to Government's Exhibit No. 16—I did not make this trip from 1800 East Colorado to Virgil. In fact I made only one trip, which was on August 2nd. As to Government Exhibit No. 19, I made this trip. I saw the signature on the bottom of [166] that invoice. I was not looking at it when the man signed it, because I saw him signing the invoice on that date.

As to whether the signature on the bottom here is Ben Rose—it seems to be there. I didn't get this ticket from that man. As to whether when I was loading the tires, the man in the sailor suit, and Brown were there during the transaction—I don't remember. Some of them did not refer to him as Mr. Rose that I can remember. It has been too long ago. I did not know before I came into the court here today, before I started to testify, that this gentleman here is known by the name of Benjamin Rose, from that invoice.

Now that I have refreshed my memory with Exhibit No. 19, it brings back to memory that I heard that his name was Rose, but at that day his name was Sam Blank. I did not know his name was Benjamin Rose until I saw that name on the invoice. I saw his name on the invoice immediately after we got through with this business. That was on the same day of the delivery.

(Testimony of Paul B. Parmelee.)

Cross Examination

By Mr. Angelillo:

I don't think I am confused in identifying the person behind you with some one else who is at the counsel table. I don't remember seeing any one at that table out there, except that man. I saw Mr. Rose there. I can not tell you how he was dressed. I talked with him. I don't remember the conversation. There was considerable conversation during [167] the time of loading, and during the time of unloading. I remember Mr. Humbert being there on that occasion. I remember Mr. Humbert bringing beer out there to me. I believe this person drank beer with me on that occasion. He was pitching the tires up into the truck. I was loading them. I was on the truck loading them. There were four of us working all together. There were five of us all together. There were three men there, and the other driver and myself.

As to whether there was a person whom I knew to be Mr. Gilber, who lived at that place on 5th Street in Ontario, and whether he was pitching tires—I did not know who lived there. He did not identify himself to my knowledge. He did not introduce his brother to me to my knowledge. I imagine there were first names used of the various individuals there, but I don't remember what they were. There were three or four on the ground pitching tires to me when Sam was on the ground, my partner, the other truck driver. The other

(Testimony of Paul B. Parmelee.)

truck driver's name was Sam. As to whether there was anyone else in addition to the truck driver whose name was Sam—there was Sam Blank. This man that I now know to be Ben Rose was pitching tires.

SAM RAPPAN,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows: [168]

Direct Examination

By Mr. Norcop:

My business is gas station and tire business at 800 North Mission. I owned the Rappan Service, at 2824 Sunset Boulevard. Prior to 1942 I sold it to the Signal Oil Company. Mr. Sam Weinstein and Mac R. Brown operated it. I had known them before they took over the physical operation of this station for Signal. Off and on I had known Mac R. Brown about five years previous. I had known Mr. Weinstein about a year. I cannot fix the date any more clearly as to when I gave over the station to Signal, but we have the sale made out, which states on it. This document you are showing me is the sale of stock in bulk. The date is October 15, 1941. From that date I did not have any ownership or control over that station. I have taken it back since. I reacquired the station December 16, 1942. My last residence was 2451 West Silverlake Drive. As the crow flies,

(Testimony of Sam Rappan.)

I would say that is practically half a mile to three-quarters of a mile from the place. Between October 15, 1941, and the time I reacquired the station I did have a truck that had T & M Tire Service printed on it. Indirectly, I bought it. The document you are showing me assists me in recollecting when I bought it. I would say seventh month, 14th day of 1942. We bought the truck from a fruit man. He is in the fruit business; his market is on 9th Street or 8th Street. I don't know his name, because my brother-in- [169] law made actually the transaction. That's why I don't actually know his name. My brother-in-law's name is Adolph Hoffman. (A check is produced.) That's the check I issued out to my brother-in-law, which he paid for, cash.

(The document referred to was marked Government's Exhibit No. 25 for identification.)

I was out of business, and I went back into business. I don't remember the exact date I went in, but it was around July, maybe a little earlier, 1942. The truck was acquired a few days later; I would say maybe two or three weeks. I don't say exactly the date, because I don't remember, outside of the check, which was made out when I bought the truck, the same identical time. As to whether I did or did not park my truck in the location at 2824 Sunset Boulevard in that period of time—the truck has never been parked outside of being in that location. I was in there often.

(Testimony of Sam Rappan.)

I would probably go to the place and pick up the check I had coming once a month from Mr. Brown, and see Mr. Jack Kirth, and some of the customers of mine I would see in there. I had a feeling for the place, and I would stop in and say hello, or something like that, and go about my business. I did not take the name of T & M Tire Service off the truck. I disposed of the truck several weeks after the freezing of the tires. I acquired the business on the date that the check was made out. That would be the 7th month, 1942. I had it up to the time of the freezing of [170] used tires. I disposed of the truck sometime probably last November, or Christmas.

FRED H. DOANE,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

My occupation is Sergeant of Police, Los Angeles Police Department. I have been with the Police Department of Los Angeles 21 years in October. The first part of October 1942 I was assigned to the Wilshire Division; the last part I was assigned, and still am assigned, to the University Detective Bureau. I recall going to the location of 613 North Virgil, in the month of October. I

(Testimony of Fred H. Doane.)

went to North Virgil, I believe it was, in September, about the middle of September. I was alone when I proceeded to that point. When I arrived there, I met Mr. Foster, and another gentleman. I see Foster here. Later I met Mr. Rose there. When I first arrived at the vicinity of 613 North Virgil, there was Mr. Foster and another OPA man. I first saw Mr. Rose on the lot north of 613, I believe it is; that building north of 613 North Virgil. After Mr. Rose was there, there was Mr. Foster and another OPA man I mentioned. A different one from the first one. They changed. I had a conversation with Mr. Rose. We drove in on the lot, and we recognized [171] the OPA man, and recognized Mr. Rose's car on the side road. I got out of the car, and walked over to Rose's car, and told him I was a police officer, and asked him if he had a key to the rear of the building. He said he did not, and I told him that the OPA said he had that place rented, and they wanted to look in there; and he said he had no key to that building. Mr. Rose said then, "Are you placing me under arrest?" I told him no, I was not placing him under arrest; that we wanted to talk to him there about the building, and we wanted to go in there, and look at the stock in that building. With that Mr. Rose said, "Unless you are going to place me under arrest I am going to leave." At that time he started his car. I reached in through the window, intending to turn the key off. He grabbed my arm, and pushed it down, and started his car, and went toward the back, made

(Testimony of Fred H. Doane.)

a lefthand U-turn around some buildings, and as he went around the buildings, he went so close as to scrape them; he was trying to pull his wheel away from the building. We followed, and got about two-thirds along, in other words, to the rear of a garage of another building in the rear of 613, and I stopped the car and got out. I told Mr. Rose to get out, and he told me that he was going to kick my God damned teeth out. I told him he might do it, but another officer was coming from the police department who wanted to talk to him, and I was going to stay there until this officer got there, and Mr. Rose stayed there [172] until the other officer got there. After the other officer got there I left. The other officer who arrived there was Officer Hamilton from the Wilshire Detective Bureau.

Cross Examination

By Mr. Goodman:

The occasion of my going out there was I had a call from Mr. Foster. I mean I received a call at the station from Mr. Foster, asking for Mr. Hamilton. He told me over the phone that he had discovered a warehouse full of tires. I believe there was something said about before I could go into this warehouse I would have to get a search warrant. I didn't go in any warehouse. I did not have a search warrant when I went out to this place where I saw Mr. Rose. Mr. Foster didn't say anything to me over the phone about a search

(Testimony of Fred H. Doane.)

warrant. Mr. Foster told me that he had found a warehouse full of tires, and we had had numerous burglaries from service stations where a large amount of tires were taken, and I was vitally interested in the burglary end of it. I didn't tell Mr. Foster over the phone that before I could go into a place like that, I would have to have a search warrant. When I arrived there, I met Mr. Foster before Mr. Rose got there. He pointed out to me the warehouse where the tires were stored. That place was locked. At that time I did not have a conversation with him in reference to having a search warrant before I could go in there. I believe a little while later I said if it was a State case [173] before we could go in there we would have to have a search warrant. Mr. Foster did not tell me that if a federal officer broke in there, they wouldn't be able to get the evidence, they would have to have a State officer to go in. I looked into the window to see what was in there. I saw there were tires there. When Mr. Rose came, he asked me if I was going to arrest him. I told him I would detain him until the other officer arrived, and if he was clean, the other officer would clean his skirts. I didn't tell him I was detaining him until he opened the door. I told him I was detaining him until the other officer arrived. I asked him if he had the key to the warehouse. And he said he did not have it. He told me he was going to leave. I told him I was going to detain him until the other officer

(Testimony of Fred H. Doane.)

was there. I could have arrested him on suspicion, but I didn't. I told him there was another officer coming over there. The other officer was Mr. Hamilton, also a state officer. I don't know what Mr. Hamilton was going to do when he got there that I couldn't do before he got there. I wanted him to wait until Mr. Hamilton got there, because Mr. Foster asked for Mr. Hamilton, and worked with Mr. Hamilton before on these OPA cases. Mr. Foster was standing by while this conversation was going on between Mr. Rose and I. He did not tell me to detain Mr. Rose. He didn't partake in the conversation. When Mr. Hamilton got there, I don't know whether Mr. Rose again tried to leave. I left [174] then. Just as soon as Mr. Hamilton drove up, I said, "This is Mr. Rose, and he has got a bunch of tires in there." I knew he had a bunch of tires, because I could see them through the window. I knew they were his tires, because the OPA said so. I was going by what Mr. Foster told me. It is a fact that Mr. Rose said at that time that he wanted to call his attorney, and wanted to have his attorney there. Just before Mr. Hamilton got there, I told him when Officer Hamilton got there, he could have anything he wanted. Until Mr. Hamilton got there, he couldn't do anything, although he wasn't under arrest by me. I was detaining him then. At that time I didn't know of any crime that Mr. Rose had committed when I detained him.

D. J. HAMILTON,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

My business is that of police officer of the City of Los Angeles. I have been with the Department six years. September 19, 1942, I was working auto thefts and burglaries at the Wilshire Detective Bureau. I did on that date go to 619 North Virgil Street, Los Angeles. When I arrived there, I saw Mr. Dundas, Mr. Foster, Mr. Earnest, the defendant Rose, and Officer Doane there. Mr. Doane just said, "I am turning the case over to you," [175] and he left. I went over and I talked to the defendant Rose, and asked him if he owned—if he had any access to that building. He told me, "No." And after a conversation he said he didn't have anything in the building, and we knew that he had tires—not that the defendant had tires, but that there were tires in there.

So he finally told us that he had a key to the building, but it was home, and he wanted to go home and wanted to call his attorney. I said, "All right. We will get in the car and go over to the station. We want to find out about those tires in that building."

So he got in the police car with me. I placed him under technical custody, placed the handcuffs

(Testimony of D. J. Hamilton.)

on him, ordered him out of the car, and knowing that he had the keys, took the keys and opened the door and pushed him into the storeroom where the tires were and there were nine tires there. I went in and kept Mr. Rose in custody, and explained to him I would have to take the tires over to the Wilshire Station to have them checked, and took Mr. Rose and the nine tires over, had a talk with him and he stated at first that the tires were not his, that he had sold them to somebody else, and they were being left there. And so I asked him—I told him I would book them as ordinary property, and give him a receipt, and after a check was made that they would be released back to him. I made a record of the numbers of the tires. [176]

(Thereupon the tires were rolled in and placed before the jury box.)

(At this point, the following took place: Mr. Goodman asked permission of the Court to approach the bench, which permission was granted. Thereupon, Mr. Goodman, together with Mr. Sullivan, Mr. Norcop and Mr. Angelillo approached the bench. Mr. Goodman thereupon stated that he objected to the tires being rolled into the courtroom and exhibited to the jury, and that his objection was based upon the following grounds, to wit: that they were incompetent, irrelevant and immaterial, were illegally obtained, and were being rolled before the jury's eyes for the purpose of creating prejudice

(Testimony of D. J. Hamilton.)

and appealing to the passion and prejudice of the jury by virtue of the tremendous size of the tires and on the further ground that there was nothing unlawful in the possession of the tires by the defendant Rose, and that the tires were not connected up in any way with the other defendants, or with the commission of any overt act. (The tires that were rolled in and exhibited to the jury were very large, new truck tires.)).

Mr. Shippee: I don't think those ought to be exhibited unless they have a ceiling price on them.

By the Witness: Those are the tires that I took over to [177] the Wilshire Station and which I brought here to court myself. I have checked the numbers on those tires with the record of the numbers I made when I took Mr. Rose to the Station.

(The tires were admitted in evidence.)

The Court: For the record. Don't you have a list of them?

Mr. Norcop: Yes, we have a list.

By the Witness: That is a list of the tires there. There is one more tire than is listed. The smallest of them is a duplicate. It is this one here (indicating). The two I am pointing out now are the same type. They are eight tires listed but nine tires here.

(The document referred to was received in evidence and marked Government's Exhibit No. 26.)

Rose asked me for the tires about three or four weeks later.

(Testimony of D. J. Hamilton.)

Cross-Examination

Mr. Goodman: The occasion of my going out to 613 Virgil Avenue was Mr. Foster of the OPA called and stated that there was a warehouse full of tires. I did not have a conversation with [178] him over the telephone. I didn't have a conversation with anybody over the phone. My captain said to meet him at 613 North Virgil Avenue. I did not have a search warrant when I went out there. I didn't have a conversation with my captain in reference to having a search warrant to go in there. When I got to the place where I ultimately took these tires, I did not have a conversation with Mr. Foster in reference to having a search warrant before going in there. Nobody talked about a search warrant at that time that I recall. Mr. Rose was there when I arrived there. He stated he didn't have a key to start out with. I didn't pull my gun. On the way out there, or when I got there, I did not have any evidence on hand that Mr. Rose had or was about to commit any felony or misdemeanor. I had no evidence at that time. I did not proceed to handcuff him because he told me he did not have the keys to this warehouse and I believed that he did. He was hostile, and I was taking no chances, and not knowing the man and knowing that there were tires in there, and I didn't know where they came from, the reason I handcuffed the man was I had reasonable grounds to believe they were stolen tires. It is an old abandoned building with a grating at the front, and a little room in the back. That appeared to be

(Testimony of D. J. Hamilton.)

abandoned at the time. I didn't know that until I got there. When I got there and I saw new tires stored in this place, that is the only evidence that I had on hand which gave me a suspicion or a belief that [179] they may have been stolen tires.

It is not a fact that I had talked to Mr. Foster and I went out there on other occasions at which time he told me that he believed these tires belonged to Mr. Rose. Based upon the evidence I had there, because I saw the tires in a place, locked in there, I then proceeded to place Mr. Rose in technical custody. And I placed the handcuffs on him.

As to what I mean by "technical custody"—Well, in other words, as far as I am concerned, he is—if I am going to take him in to the station and he is hostile, or anybody is, we take them into technical custody such as to book him on suspicion of burglary or any felony. He was under arrest. He wasn't booked, but he was under arrest at that time. I didn't tell him what he was being arrested for. He was arrested on suspicion at that time. He was placed in technical custody until I could find out what was going on in regards to the tires in the storeroom. After I talked to him at the station there, he was released. I didn't take the key off his key ring. I took the keys. I opened the door. I didn't have a search warrant at the time. I was not violating the law if I have reasonable grounds to believe there is a felony to be committed or stolen property. Then I went in and took the nine tires.

(Testimony of D. J. Hamilton.)

They were in the same condition as they are now. I gave Mr. Rose a receipt for them. (Document produced.) [180] This is the receipt.

(The document referred to was marked Defendants' Exhibit A for identification.)

Then after I got the tires to the station, having issued this receipt, we made an investigation to determine whether the tires were stolen. I found they were not. They were not stolen. Then after I found out that they were not stolen Mr. Rose communicated with me. He called me first by telephone. It wasn't more than a week after the date upon which I took the tires. I don't remember the conversation with Mr. Rose other than the fact that I referred him to the Office of Price Administration, to Mr. Dundas. I did tell him on that occasion, "You can come and get the tires. We found out they were not stolen."

After I told Mr. Rose he could have the tires, they were available to him, that he could come out and pick them up, then I called Mr. Dundas, the attorney for the Office of Price Administration. Substantially, I told him I was going to deliver the tires to Mr. Rose, and he told me not to deliver them and said that he wanted me to hold them until this trial is over. When Mr. Rose called for the tires, I said "I am sorry, I can't give you the tires. I have received information from the Office of Price Administration that I have to hold them." I said I was suspicious of the fact that they might have been

(Testimony of D. J. Hamilton.)

tires that had been stolen or burglarized. It is a fact that all divisions all over [181] the city had considerable difficulty with stolen tires, and that the tire dealers were having considerable trouble in keeping their tires in such places and under such lock and key that they could not be hijacked, broken into and stolen. It is a fact that particularly in reference to gasoline stations where tires were stored, that they were breaking into gasoline stations and stealing new tires and tubes. I do not recall that many of the retailers, in order to avoid such losses, used other places to store their tires and tubes. I was working with Mr. Foster on these various tire matters for some time. And as a result of my association with that particular office there had come to my knowledge many of these cases where there had been thefts and burglaries of tires and tubes.

As to whether Mr. Foster, when he talked to me about this matter, told me that he believed that some of the tires were stolen—well, we have had complaints of burglaries in those areas. Mr. Foster was working on it from the government's standpoint, and I was working with Foster through the Statewide burglary detail. When I came out there, I believe Mr. Rose asked the right to call his attorney and be represented by counsel. When he went into the station he could have the right.

As to whether that was long after I handcuffed him and released him—not long after. I handcuffed him first, then I opened up the place and

(Testimony of D. J. Hamilton.)

went in there, and it was [182] subsequent to that that I removed the handcuffs. When I got into this place, I was not there when any photographs were taken. The place as it appeared to me when I went in was similar to what it is in the photograph, and I have seen it. (Counsel hands photographs to witness.) When we first entered, this (indicating) was the photograph of the tires. The unwrapped tires had been taken out when this was taken. I saw this pile of paper and boxes there when I first entered the premises. There was debris scattered around there. I don't believe Government's Exhibit No. 21-A represents a fair and reasonable presentation of the appearance of that place when I first entered there. This one here (indicating), this one here looks more like entering from the door. This (indicating) is a side view here. I did not see anybody there gather the paper and boxes and place them in a pile there.

Exhibit 21-A is a fair presentation of that place. They are all fair. They are taken from different angles. When you enter, you see it from this angle (indicating), and this (indicating) was taken from the side. That was taken from the side, because as you come in there is a door leading into the outer room, you come in this way. There were not any of the tires unwrapped or any tubes removed from any boxes before the picture was taken. I am positive. These tires were removed before the picture was taken, but they were unwrapped, and that is the reason they were taken. [183] They were taken be-

(Testimony of D. J. Hamilton.)

fore they were unwrapped. Maybe one or two were taken from a pile indicated in the photograph, and most of them were over here (indicating), the larger tires.

When I got there, there was those nine unwrapped tires there. Just nine of them.

As to how many unwrapped tires I see upon these photographs, upon the two different photographs—(pointing) these two are not totally unwrapped. They weren't totally unwrapped. They were like that, but they are partially unwrapped. I had the handcuffs on Mr. Rose from the time we loaded the tires until we got into the station. Not more than about a half an hour, because I left right away with Mr. Rose, as soon as we got the tires in the car. I didn't wait until the photographer came there. I left as soon as I got the tires in the police car, and took Mr. Rose with me. That took half an hour to forty-five minutes. I went Virgil to Pico, and West Boulevard, which can be made in about fifteen to twenty minutes. That is to the Wilshire Station at 4526 West Pico. I was on Virgil and Commonwealth, or Melrose, I believe; close to that location. I was not there while all the inventory was taken. I stayed while a part of the inventory was taken, but that was when we were loading the tires. The total transaction of getting Mr. Rose into the station didn't take over 45 minutes. I don't know how long it took to take the inventory.

HENRY L. DOYLE,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

I am service manager for the Smiling Irishman, 921 South Hoover. We sell used automobiles. I have been with that place about a year and a half. In September 1942 I was there. Mr. Rose called on me. This gentleman in the uniform there. No one else was present. I had a conversation with him in the shop. Mr. Rose came in and asked me if I wanted to buy any tires and I told him, "No." I asked him what they were. He said he had new tires. I asked him the price. He said they were \$35.00 apiece in lots of a hundred or more. I asked him what price they would be in lots of four. He said, "Thirty-seven fifty." And I asked him how I could get in touch with him and he left a card with me. This card is the one. I did not place any handwriting on the card. Mr. Rose did—in my presence.

(The document referred to was received in evidence and marked Government's Exhibit No. 27.)

I did not have any transactions with Mr. Rose as a result of that conversation.

Cross-Examination

By Mr. Goodman: [185]

I never bought any tires from him. I was a

(Testimony of Henry L. Doyle.)

used car dealer, not a tire dealer. I did not ever sell tires. I had a retail sales tax permit. The firm has had it for about six years. They have been in business about six years. We did not sell tires of any kind. We sold used automobiles, and service. When we sold these automobiles we often put tires on the automobiles if they needed them, prior to the freezing. We did not put any tires on any cars after the freezing order. We never acquired any. Our permit number is X 2721.

DONALD D. HARWOOD,

a witness called by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

At the present time I am employed with the Office of Price Administration as *as* attorney. I have been with the Office of Price Administration since the 14th of September, 1942.

I have seen Mr. Rose before. The first time I recall seeing Mr. Rose was on a Saturday morning at approximately 11:00 o'clock, on North Virgil Street, 613, in Los Angeles. Mr. John Foster was there. There was no one else besides Mr. Rose there that I saw. I had no conversation with him. I overheard a conversation. The conversation was that

(Testimony of Donald D. Harwood.)

Mr. Rose after Mr. Foster stated hello, or made some greeting, [186] that he, Mr. Rose, in driving down Virgil Street had seen Mr. Foster, and drove in the lot to say hello. Foster asked Rose what he was doing. He said he was fooling around; and Rose asked Foster what he was doing, and he, likewise, said he was just fooling around. Mr. Rose, while sitting in his automobile, stated to Foster, "Why don't you get wise to yourself and quit fooling around with this OPA", or Government stuff, and Mr. Foster said, "Well, that was his business," and Mr. Foster said, "Well, if you don't watch out, you might get hurt." Mr. Rose stated—did I say Foster? Mr. Rose stated, "If you don't watch out you might get hurt." That is all the conversation I can recall.

Mr. Goodman: I move to strike out the answer on the ground that it is incompetent, irrelevant and immaterial, and does not prove or disprove any issue in the case, and is only brought here to inflame the minds of the jurors, your Honor.

The Court: Motion denied.

(By the Witness:)

I met Mr. Mac R. Brown on or about the 15th day of September, at a service station on Sunset Boulevard. Mr. John Foster was with me. Mr. Foster and Mr. Brown had a conversation in my presence. There might have been a party in the service station, but there was no one within hearing. We were in an automobile, and drove into the serv-

(Testimony of Donald D. Harwood.)

ice station. Mr. Brown, as I recall, was in the part of the service station [187] which is used for a sort of an office as well as battery repairs. There were a few miscellaneous items lying around. Mr. Foster asked Mr. Brown if he had the invoice, and he produced an instrument in writing, and handed it to Mr. Foster. Mr. Foster asked Mr. Brown where the tires were. He said he did not know. He had sold them. Mr. Foster stated, "You will have to get the tires back." Mr. Brown stated, "I don't think I can get the tires back. I will try to get them back, but I don't know what I can do about it, or how." That's the substance of that conversation. I saw the instrument that I have referred to. Exhibit No. 23 is the instrument in writing which was handed to Mr. Foster on the date that I mentioned by Mr. Brown.

I have met Sam Weinstein. I first met him either on the same day that I had met Mr. Brown, sometime thereafter, or the following day; I do not now recall when. I met him at a service station, to the best of my recollection, on Riverside Drive. Mr. John Foster was with me. There were two or three individuals in the service station, pumping gas, and standing around. I do not know who they were. Mr. Foster had a conversation with Mr. Weinstein of a very casual nature. The only thing I can recall, Mr. Foster asked Mr. Weinstein either if he knew a certain party, and I do not now recall the name of, if he knew where he was. That is about all I can remember. It was very brief. [188]

(Testimony of Donald D. Harwood.)

Cross-Examination

By Mr. Goodman:

I am an attorney-at-law. I have related all the conversation that took place on the occasion of September 14th that I overheard between Mr. Foster and Mr. Rose to the best of my recollection.

As to whether I recall Mr. Foster addressing Mr. Rose in these words: "Well, I am going to stick with the OPA, because I have already got two deferments. I don't want to get into the military service as long as I can help it." No such statement was made.

NORMAN IRWIN,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

I am an auditor employed by the Eagle Oil Company. I have been with the Eagle Oil Company since September, 1940. I know of my own knowledge any of the subsidiary concerns controlled by the Eagle Oil Company. There is one; that is the Golden Lubricants, Incorporated. The Golden Lubricants, Incorporated has had a station at San Fernando and Winchester Streets in Glendale. I don't recall when it was opened. I have looked over the records in the company, and the station

(Testimony of Norman Irwin.)

was closed on April 6, 1942. [189] Golden Lubricants had a California sales tax license number. Golden Lubricants had about 45 stations all together. They used the same master sales tax number, but each station had a sub permit, which was different in each case. The station at San Fernando and Winchester Road in Glendale had a specific number. I know definitely the station did not carry on business at that location after April 6, 1942. No one by the name of Joe Munn was ever employed by my company.

Cross Examination

By Mr. Goodman:

Our various service stations that we operated under the subsidiary of Golden Lubricants, Inc., each had a number. No. 28 was given to the station on San Fernando. We had a station at 2800 San Fernando Road, and we still have it. The station at San Fernando Road and Winchester is station No. 28. That is the one that is closed. Golden Lubricants, Inc. had in the past year in the neighborhood of 350 employees. I have been with the company since September, 1940. From the time which I was first employed there had been about 350 employees hired and fired from that time on up to September the 5th, 1942. I have a permanent record in which the names of all employees are listed. I have not brought that record with me. It has not come to my knowledge in the past year or so that sales of new tires and tubes were being

(Testimony of Norman Irwin.)

made to some representative, who represented himself as a representative [190] of the Golden Lubricants, Inc. This is the first time I ever heard of this beyond the fact that I had a letter from Mr. Norcop, from the OPA. There were not any other instances in the last year in which someone, representing himself as a representative of the Golden Lubricants, Inc., had bought tires as a retailer and given our number. My company did sell new tires and tubes up to the time of the freeze; and thereafter, subject to the rules and regulations and directives of the Office of Price Administration. We kept a stock of new tires on hand at some of our stations. I don't believe we made any sales at all during the year 1942 from dealer to dealer. The records probably would show that Golden Lubricants is a corporation. I have had occasion to look at the Los Angeles Extended Area Telephone Directory for June of 1942. I was at one time familiar with the listing of the various stations operated by the Golden Lubricants, Inc.

I would not say that the stations that are designated in the book as of June of 1942 were those in operation at that time. They would not indicate, because we opened and closed stations periodically, and oftentimes the listing remains in the book after the station has been closed.

I was not at the place at San Fernando and Winchester on the date that the station closed. As to what information I base my statement on that it closed exactly on that date—Well, I have my

(Testimony of Norman Irwin.)

files here, my inter-office com- [191] munications from one department head to another, advising that such took place. I have the closing service station report marked "Final" by our auditor who was doing the field work at that time. My opinion is based upon inter office communications and not upon a physical examination of the premises, of the physical closing of the station.

The manager was in charge of that station on and before April 6, 1942. I believe his name was Lou Zweighoft. I do not know where he is now. I can not describe the man's build and description. I never saw him. I do not have a picture in my files anywhere or any record with my company. I do not have his fingerprints, nor his birth certificate. In addition to Mr. Louis Zweighoft, I am sure there were other persons employed there, but I can't say who. The direct hiring was done by the station manager and approved by our field man, field salesman. The man who met the employee first and who hired him was not in all cases the station manager. I do not know whether or not it was in reference to the particular station that we are discussing here this morning. I couldn't say as to whether Mr. Zweighoft hired a man there and then sent in the information to our office. I would not know whether or not the man he hired was giving the correct name or not, other than from what was given me by the station manager. The master number of Golden Lubricants, Inc., that is, their seller's resale number was AGX 6285-8. [192]

(Testimony of Norman Irwin.)

(A Document is marked 28 for identification.)

Mr. Norcop: Let the record show Mr. Goodman has handed the original of the document that I was asking to have marked for identification, and also, a state resales certificate which has the same number, and we will ask that they all three be put together as one exhibit.

(The documents referred to were received in evidence and marked Government's Exhibit No. 28.)

HERMAN STEINBERG,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

I operate a service station and tire place at 901 East 9th Street. It is at the corner of 9th and Wall. I have been engaged in business there about two years. During that time I have carried some stock of new tires. I know a Mr. Sam Weinstein. I know Mr. Phil Taplin here. Both of these men came to see me at my station in the past year. I don't remember exactly the month but it was just a couple of months after the freezing order came into effect. No one else was with them. Just these two gentlemen. I had a conversation with them.

(Testimony of Herman Steinberg.)

They saw the big stock of tires that I had, new ones, and they asked me whether I wanted to sell them, and I told them that I didn't care to [193] sell them because I would rather sell them retail, without the freezing some day, that I figure that the Government will release them and then I will be able to sell them retail at better prices. That is about all the conversation. They did not come back on any other occasion. I did not sell them any tires. I was not liquidating my business at that time.

RAY H. PADDOCK,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

My business at the present time is field secretary for the Independent Retreaders Association in Los Angeles. Prior to three weeks ago, I was a tire jobber. I was in that business here for 13 years. Among the persons seated at the table—the only man that I remember meeting is Mr. Rose,—yes; Mr. Brown, too. I called on Mr. Rose about a year ago at a Shell station. I would say it is on Tenth and something, Flower or Figueroa or Broadway, one of those streets, here in Los Angeles. I did not have a conversation with him there. I left my card

(Testimony of Ray H. Paddock.)

and he called on me at my office a week or ten days later. My office was at 316 Commercial Street, L. A. Warehouse. No one came with Mr. Rose the first time. No one was present besides Mr. Rose [194] and I that I recall. I had a list of tires that was available in the California Warehouse that was just down the street. I told him that. I showed him the list and he looked to see. He wanted to know what condition they were in and we went down to the warehouse and thoroughly examined them. I would say there were approximately 60 or 70 tires there. They were all new, in wrappers. They were the property of Guy Bryan. I then took him over and told him that they were the property of Guy Bryan and left them there, left Mr. Rose with Mr. Bryan. I left where the tires were and went just down the street to Guy Bryan's there. Mr. Rose went with me. I saw Mr. Bryan there. No one else was there besides Mr. Rose and Mr. Bryan and I. I left and came on back. I left he and Mr. Bryan to go ahead and make any deal they wanted to. I introduced Mr. Rose to Mr. Bryan. There was no conversation other than what I have told you about that at that time, because I left. I don't know. My memory isn't clear on just how Mr. Brown got into the picture, unless Mr. Rose told me that Mr. Brown was going with him over to see Mr. Bryan. I am not clear on that one.

I don't think I have seen Mr. Brown before. I think I remember Mr. Brown from years back in his service station out on Sunset Boulevard. Mr.

(Testimony of Ray H. Paddock.)

Brown is the fellow with the bald head. The one that stood up awhile ago. That is Mr. Brown that I refer to. He is the one I had known on Sunset [195] Boulevard some years ago.

Cross Examination

By Mr. Goodman:

I was never employed by Mr. Guy Bryan. I never acted as a jobber for him. I was never trying to sell these tires for him. Mr. Bryan at one time was a carload buyer of tires from me. He was one of my very big customers.

The occasion of my going to see Mr. Rose was Mr. Bryan asked me. Mr. Bryan had released from the government a stock of 60 or 70 tires that were in a warehouse on Commercial Street, and he asked me if I knew where he could dispose of those tires and offered me five per cent if I could sell them for him. I took the list from him. I called on Mr. Rose for the purpose of selling him some new tires and tubes for and on behalf of Mr. Bryan on a commission basis. I never made any sale. Mr. Rose did not buy the tires. I knew that Mr. Rose was a retailer, licensed to purchase those tires. Nothing wrong about the attempted transaction that I knew of. I don't think a sale was ever made with Mr. Bryan.

Cross Examination

By Mr. Sullivan:

Mr. Brown did not have anything at all to do with this transaction with me personally, only Mr.

(Testimony of Ray H. Paddock.)

Rose intimated that Mr. Brown would have to approve it. Mr. Rose took Mr. Brown with him to consummate the deal. I did not have any conversation with Mr. Brown. I did not overhear any conversation between Mr. Brown and Mr. Rose. As to whether I saw Mr. Brown at Mr. Bryan's place when I went there—I am not sure of that one. It might have been Rose told me that he was talking to Mr. Brown. I wouldn't say that, that I did; no.

NATHAN LEVY,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

My business is Service Station Operator in Los Angeles. I have been engaged in that business 10 years. At the present time I have three stations. In connection with my service station business I handle new tires. I know Mr. Vitagliano, Mr. Lieb, and I know Mr. Weinstein slightly. I was in the business that I have just related in the first half of 1942. In that connection I saw Mr. Vitagliano in March, 1942, at my service station at 8th and Wall Streets. Besides Mr. Vitagliano and I, there was a man there. I don't know who it was. I think he was participating in any conversation that may

(Testimony of Nathan Levy.)

have occurred. He was with Mr. Vitagliano. He did not come with Mr. Vitagliano. He was driving another car. He wasn't anybody in my employ. I had a conversation there at that time with Mr. Vitagliano.

I was a dealer in tires at the time. I was authorized [197] to sell tires; I was a dealer in new and used tires. I did not have any further conversation with Mr. Vitagliano on any other subject at that time that I remember definitely. On another occasion he discussed tires with me. It might have been one or two months later. No one else was present then besides Mr. Vitagliano and I. It must have been at the bank, at the California Bank, at 9th and San Pedro. He told me he had some tires and if I was interested. I told him, "No; I was more or less through." And he asked me if I knew anybody else who was interested in tires and I told him I did not.

As to whether he mentioned the quantity that he was talking about—Well, approximately, it might have been up about \$15,000.00 worth of tires.

Cross Examination

By Mr. Goodman:

I was still in business at the time that Mr. Louis Vitagliano offered to sell me some tires on the last occasion. I still had my retail sales permit.

Cross Examination

By Mr. Angelillo:

I had known Mr. Vitagliano for some time prior

(Testimony of Nathan Levy.)

to this transaction that I talked about. I had seen him frequently at the California Bank quite often. My place of business is in close proximity to where two of his places of business were formerly located. I believe I knew or had [198] been told by him that he had three places of business. I was further told by him that he was liquidating two of them.

NORMAN IRWIN,

recalled.

Further Direct Examination

By Mr. Norcop:

I have brought a list of the 45 service stations of the Golden Lubricants, together with the California sales tax permit numbers. This is it. This has on it a number that I saw here this morning on one of the invoices that was exhibited to me. The number I see here that I saw here this morning is AGX-6285-8. I find that number on the original invoice there, the white one of Exhibit 28. My sheet shows that that station was located at San Fernando and Winchester. My information that I brought as to the closing date of the station is merely verification that it was closed on April the 6th, 1942.

Cross Examination

By Mr. Goodman:

As to whether Golden Lubricants, Incorporated purchased new tires and tubes at some central office, or whether they were purchased by the managers

(Testimony of Norman Irwin.)

of the individual stations—The original inventories were purchased by Golden Lubricants from our tire store on 3300 Sunset Boulevard.

As to whether when we made purchases of new tires and tubes through that central location we used or gave any other sales tax number other than “AGX-6285-8”—That would [199] depend on which station was buying the tires. We bought the tires there for all the stations, for each station. We would not on all our separate invoices indicate separate sales tax number for each station. We would indicate the master number only. Then we would distribute the tires to the stations as they needed them in the original set-up, for the original stock. The master number of Golden Lubricants, Inc., is not “AGX-6285-8”. It is “X-6285”. No “8” and no “AG”. I have the list that I brought with me. That is exactly the way I took the information off the permit. This list I have here does have the number AGX-6285-1. The only difference between that number and the one he gave me is the last number. It is not necessarily a fact that the last number following each one of these numbers represents the number of the station. That was put on by the State. We did have the number AGX-6285-8. During the time this station was in operation, No. 28, the number that I have here on my list is the same as I have on this item AGX-6285-8; which corresponds to the number on Government’s Exhibit No. 28, AGX-6285-8. I did not bring a list of the various employees. I have not investigated any of the

(Testimony of Norman Irwin.)

other matters that I testified about this morning on the witness stand, between that time and this afternoon.

WILLIAM J. DAVIS,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified [200] as follows:

Direct Examination

By Mr. Norcop:

Mr. Norcop: If there isn't any objection, I would like to have the list the witness referred to marked for identification.

(The document referred to was marked Government's Exhibit No. 29 for identification.)

By Mr. Norcop:

My occupation is Service Station Operator. I have been engaged in that work about 10 years. In May, 1942, I was engaged in that work. I was then working at 500 South Atlantic. I was employed by Urieh. I operated the station. I have seen this document dated 5-7-42 before. It is in my handwriting. I made a sale of the merchandise that is listed on this piece of paper.

(The document referred to was marked Government's Exhibit No. 30 for identification.)

On the occasion of this sale, which is represented by this Exhibit No. 30 for identification, two men

(Testimony of William J. Davis.)

came in and wanted to buy some tires. As to whether I see either of those two men here in court—They look similar to the men that came in. I am not positive its exactly the same. One man, on the corner there, and another man over there, but I am not so sure about the other man at the far corner there, with gray hair. (Pointing to Mr. Weinstein and [201] Vitagliano.) They came there in a vehicle—I have the license number marked down. There must have been two vehicles. I have two license numbers there, so I think it was two vehicles. I delivered the tires at the same time the men came there. They took them. They were paid for. The amount of money that is shown on the invoice was what I received. There was no conversation—just mostly about the price; how much I wanted for them. That’s about all. I wanted to make sure it was a dealer. I did not have this document in my possession all the time there—just part of the time, up until the time that the OPA—one of the men came out and gave me a receipt for it. I had lost it for a little while. In checking the tires to see if they got the right amount I missed the slip, and one of the men had this in his pocket. I said, “I would be in a bad fix without any slip at all to show the sale.” These figures at the top of this document are the license numbers that I have mentioned in my statement. That’s what I marked down. These other figures to the left, and a little below the ones I just looked at are my figures. I marked them

(Testimony of William J. Davis.)

down as they were driving out. That's the top figures. As to the ones to the left, a little below, I couldn't say when I marked them down. I don't know whether I got them before or afterward. It must have been afterward.

As to how in making up this invoice I happened to note the name on the line where it says "credit line"—That [202] was the name given to me as the dealer. I have no idea which of the men I have looked at here gave me that name. I wouldn't know which one of the two.

As to whether there is any writing on the face of that document that isn't mine—This bottom signature, next to the bottom, is one of the men that bought these tires, and signed this ticket. There is a retail sales tax number on the ticket—No. A 24695. That was placed on there at the time the transaction was being consummated.

Cross Examination

By Mr. Goodman:

I had been engaged in business as a retail operator of a gasoline station for some time. I held a board of equalization seller's permit at the time of this alleged transaction. I did not call the office of Price Administration before I made the sale, to ascertain how to make the sale. I did not receive any instructions from the Office of Price Administration, or any representative thereof, telling me

(Testimony of William J. Davis.)

how to make a sale of that kind. I had the impression that such a sale was legal between dealers. When I sold these tires to these gentlemen whom I can't identify positively, I was positively of the opinion that I was making a lawful sale under the rules, regulations and directives of the Office of Price Administration. I made a record of the sale. I took the license numbers down in this case because I knew there were some restrictions on sales, so I [203] wanted to make sure it was a dealer. They represented themselves as dealers. They told me where this station was located. The address is on the slip. I didn't check to see if there was such a station there at the time. I don't know whether there was a station at that address or not. I tried to check one of the addresses that had the sale there. I don't know whether this was a dealer or not. When I made the sale I took the pains to insert on the invoice that these tires and tubes were being purchased for the purpose of resale, and I so indicated that on the invoice. That is where I got the number.

I never had any business with Mr. Benjamin Rose, nor Mr. Joseph Lieb, nor Mr. Mac R. Brown, nor Mr. Phil Taplin. In reference to the other two gentlemen; they are similar to the guys, maybe the same, I am not positive.

LEO ISENHOWER,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

I am an employee of the California Overall Cleaning Company. I am a laundryman. I run a laundry route. I have been engaged in that occupation since about March, 1942. In my work I use a Chevrolet sedan delivery. It's a laundry truck. As to the persons sitting to your left in the court [204] room—I know only Mr. Rose, he is the gentleman on my far right. I knew him for a short while, but it has been quite a while ago. I saw him several times. I am not personally acquainted with him. I saw him sometime in 1942. I first saw Mr. Rose at one of my laundry stops. It is a service station immediately north of the J. L. Schlosser Company, on Western Avenue. I don't know the name of the service station. It could be Victory Service, but it is definitely on Western Avenue, and immediately north of the J. L. Schlosser Chevrolet agency. The name of the customer there was Fenton, and another man named Willie. Willie was a negro. I go in that station at that time twice a week regularly and pick up laundry. I met Mr. Rose there. I did not have a conversation with him the first time I met him. Probably the second time. There was no one there in the hearing of this conversation besides Mr. Rose and I. There

(Testimony of Leo Isenhower.)

was an office in there where the men came to change clothes, and quite often they did change clothes. It is a small office, and the customer came to pay his bill, and Mr. Rose, I believe, was standing in that office there one time, and the subject of inner tubes was mentioned, and I needed inner tubes for my trucks. I did not know where I could get them. I talked to him about it. I don't know just who said what first, or how, but we did talk about it. I mean Mr. Rose. The sum and substance of the conversation was that he had some inner tubes for sale. I needed them. He said he could sell them to me, and I said I would like to get them, [205] so I made an agreement to buy them from him. There was a statement as to price of around \$4.00 apiece. I did not take delivery of them there. I run a laundry route. I am at certain places at certain times of the day; on different days of the week I am in different territory, and I met him on a different day, a day or two later, it was convenient to him and convenient to me, and I got them at another place. It was near 9th and LaBrea, on a vacant lot, next to a large building. I don't think it is used as a parking lot. It's in a fairly busy part of town. Besides Mr. Rose and I there were passers-by, pedestrians; not directly concerned; no one that I knew. I think he arrived first. There was no one else there besides he and I. He brought along the inner tubes I had agreed to buy from him, and I bought them from him. It seems to me there was five or six; I think there were six boxes of them. I

(Testimony of Leo Isenhower.)

think there were six in a box. That would be 36 inner tubes. I paid him. I can't recall exactly what the price that I paid him was, but it was close to what we had originally agreed on. I actually wanted to get less than 36 inner tubes, and when he got them there, why, he didn't want to keep all of them, and I thought that, rather than not have any, I had better just take them along. I can't remember anything said word for word. The substance, that he just had the merchandise and I wanted it, and I didn't want as much as he had there; but, on the other hand, rather than not to get any, I did need the inner tubes. [206] I generally have some checks in my pocket and I generally have cash in my pocket, and I paid him—it seems to me like I gave him mostly cash. I think there might have been one or two checks. They were not personal checks. I mean by “personal checks” my own checks. I was not a retail tire dealer at that time. I am a laundry man. I did not have any certificates from any rationing board to obtain these tubes. I didn't have any certificates to obtain them with and I didn't feel that I needed them.

Cross Examination

By Mr. Goodman:

I don't think I was introduced to Mr. Rose at the gasoline station. I didn't know Mr. Rose prior to that time so that I would know him by name and he knew me by name. I first met Mr. Rose at the station where I first met him there. I had not actually formally met him. I just saw him. I was actually

(Testimony of Leo Isenhower.)

formally introduced to him after I got talking to him about the inner tubes, I guess. I wasn't formally introduced. I just got acquainted. I have not related all the conversation on direct examination that took place between Mr. Rose and I before Mr. Rose agreed to sell me the inner tubes.

As to whether I recall telling him that I wanted to buy the tubes for the purpose of resale and that I had a retail sales permit—I don't think it was mentioned. I don't recall saying anything in that reference either yes or no. [207]

As to whether he asked me if I had a retail sales permit—I can't say that he did or can't say that he didn't. I don't think he did. I will tell you this: I didn't tell him that I had one. It is my impression that, to kind of clear the question there up, that the trucks themselves—that I have a truck and my brother also runs a truck, and I was getting the tubes for both trucks; and it was my impression that inner tubes, new inner tubes, were frozen and the only place that a private party could buy them would be to find somebody that had them that he could get them from. I learned different since then, but that was my impression at the time. I felt that I was perfectly O. K. to go ahead and buy the tubes from him, so I never talked about it. I didn't think I was violating any law.

As to whether I tried to give Mr. Rose the impression that I was a dealer—I don't think I tried

(Testimony of Leo Isenhower.)

to imply any impression, other than that I wanted some inner tubes. I don't think I told him that I would subsequently give him the number of my retail sales tax permit. I told him I had several trucks. I probably said that, all right, because I did. I only have two now. I wasn't in the trucking business, though.

As to whether I told Mr. Rose also that I had a lot of business with gasoline service stations and that I was buying tubes for that purpose—I don't recall anything along that line of conversation.

[208]

In reference to this transaction—I was not really contacted by anybody. As I say, I am into this place regularly. It is a small room. I know that there was at least one or two times, prior to making the agreement to buy the inner tubes, that Mr. Rose was there, and I can't recall the exact conversation; but I did get the information that he had some inner tubes for sale. I can't say how or from whom. As to why I bought 36 inner tubes when I had only two trucks—the two trucks using inner tubes, in my experience, that the inner tube is only good for about six months and it will take ten tubes to give an extra set for each one, and at that time I had no idea of how long the war would last. I was for laying in stock. I didn't want to get put out of business. I was going to see that I had a good supply on hand for myself. I don't know that anybody contacted me first to check on this transaction. I was sub-

(Testimony of Leo Isenhower.)

poenaed in Court as a witness. Mr. Foster and Mr. Norcop talked to me before I came here in reference to that subpoena. Mr. Foster contacted me before this trial. That was a week ago Monday. I had seen Mr. Foster several times, but not definitely regarding this trial. I don't know when the first time I contacted Mr. Foster was. I have known him a month *less the* time than I have known Rose. I have known him for about six months. I don't know him in a personal way either. I know who he is. I met Mr. Foster approximately a month after this transaction with Mr. Rose took place. I met him in Santa Monica. I did not have a definite appointment with [209] him. I just happened to run into him. It was at the police department in Santa Monica. I was under suspicion of having stolen property. I was being held. Someone had told them I had some batteries and rubber and so on in my garage, and they thought I had stolen them, but I had bought them. I met Mr. Foster first in Santa Monica, in an office room in the Santa Monica Police Department. At that time I had a conversation with him. I couldn't say whether at that time I told him about the purchase of these tubes. There were several things mentioned. As to whether anything was said about the transaction of the sale of any tubes by Mr. Rose to me—as far as I know there could have been or there could not have been. I next saw Mr. Foster about a week or two weeks later at his office at the Office of Price Administration. He asked me to come down and talk to him about

(Testimony of Leo Isenhower.)

it. It is not a matter that refers to this case in particular. It is a separate transaction. I had a conversation with him at that time. In that conversation I think the question of a sale by Mr. Rose to me was brought up. Mr. Foster started to talk about these tubes first. I didn't have them any more and I was trying to get them back again. Mr. Foster had the information about the tubes prior to asking me about it from other sources. He asked me where I got the tubes. I can't tell you the exact conversation, but the gist of it was that I did get the tubes from Mr. Rose. I had been informed that I had violated [210] the rules and regulations of the Office of Price Administration in that respect before that time. I have been informed of it pretty regular. I haven't been threatened or told that I would have to testify against Mr. Rose. Today I came down here of my own part. I was subpoenaed down, but I am not testifying against Mr. Rose or for Mr. Rose. I am just telling what happened. At no time since the first time I talked to Mr. Foster did he tell me that if I would come up here and testify that they would give me immunity and would not prosecute me. As far as I know, if I have a violation of the Office of Price Administration, at the time I violated them was just like when I bought these tubes. I didn't intentionally do it, but so far as I know, I am being charged with that violation. They have placed something against me. I was in court a week ago Monday, and I am to appear

(Testimony of Leo Isenhower.)

in court again the following Monday. My matter is not yet determined. It is not a fact that that is the reason that I am now testifying that I did not tell Mr. Rose that I was a dealer. It is not a fact that my case was continued until next Monday so that I could come in here and testify today before my case was heard.

Q. By Mr. Goodman: Did you dispose of any of those 36 tubes by sale?

A. I refuse to answer the question, unless I have to.

Mr. Goodman: He has waived his immunity.

Mr. Norcop: If the court please that is not part of [211] the examination of anything that was asked him before on direct and he did not ask to make him his own witness.

Mr. Goodman: That is the entire transaction.

The Court: Just a moment. I am going to sustain the objection. Just remember, gentlemen, that this man is not on trial. The defendants that are named in the indictment are the defendants in this case, so this witness is not on trial.

Mr. Goodman: I want to take an exception, and I also want to make an offer of proof, your Honor.

The Court: You will have to make your offer of proof in the absence of the jury, and make it in the record and exception will be noted. You can make it during the recess.

By the Witness: As to the other defendants in this case—I have looked the gentlemen over here around the table you are sitting at. I have never

(Testimony of Leo Isenhower.)

seen any of them before. I don't think I know any of them. I have never seen any of them. I have never owned or operated a service station either before this transaction or thereafter. I have never operated any place where new tires and tubes were sold either before this transaction or since.

DAVID M. HOFFMAN,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows: [212]

Direct Examination

By Mr. Norcop:

I am an enforcement attorney employed by the Office of Price Administration. I have been with the Office of Price Administration since the 26th of May of 1942. I met Mr. Rose, I believe, one time to speak to him. That was at the Office of Price Administration, 1033 South Broadway, in the city of Los Angeles, about the latter part of June, I would say around the 23rd or 24th, 1942. There was Mr. Foster, of the Office of Price Administration, and Mr. Storms, of the Office of Price Administration, and myself, and a stenographer of the Office of Price Administration by the name of Miss Viley. This stenographer made notes of the happenings upon my request. I talked with Mr. Rose upon that occasion. I can't remember all of it. I could possibly remember a great por-

(Testimony of David M. Hoffman.)

tion of it if I could refer to the statement that was made up on that occasion. (The witness did not refer to the statement.) Mr. Rose came into the office with Mr. Foster and Mr. Storms and I was called, and we went into one of the offices and sat down and I proceeded, first, to talk to Mr. Storms and Mr. Foster, in the presence of Mr. Rose, and at that time Mr. Foster and Mr. Rose—Mr. Storms informed me that Mr. Storms had been down to Mr. Rose's service station located, I believe, on the corner of Olympic and Hill, and had had a conversation with Mr. Rose in which Mr. Rose had offered to sell Mr. Storms four new tires for, I believe, a price of \$175.00, and had [213] offered also to sell Mr. Storms some retreaded tires for, I believe, \$16.00 or \$17.00 each.

I then asked Mr. Rose if he was the owner and operator of this service station; and he said, "I refuse to answer." I said, "You have heard Mr. Storms recite what he just told me. Did that take place?" He said, "I refuse to answer." I asked him if he knew—if he operated a parking lot known as the Capital Parking Lot, or Capital Auto Parks, to which he replied, "There are many Capital Auto Parks."

Well, I said, "I am speaking of the Capital Auto Park mentioned by Mr. Storms, located on 6th Street, I believe." He said, "I refuse to answer." I asked him if he sold tires at his service station at the corner of Olympic and Hill;

(Testimony of David M. Hoffman.)

and he said, "All service stations sell tires." I asked him if he sold new tires. He said, "I refuse to answer." I asked him if he sold used tires. He said, "Yes, we sell used tires." I said, "Where do you sell used tires?" He said, "My brother runs the parking lot on 6th Street." I said, "Is that the Capital Auto Parks that I asked you about before?" He said, "Yes." I said, "Does your brother run that place?" He said, "Yes; but I have the license." I said, "You also have the license for the Shell Auto Park"—I believe that was the name of it—"on the corner of Olympic and Hill?" He said, "Yes." I said, "Now, did you offer to sell Inspector Storms some new tires for \$175, as he states?" He said, "I never saw Inspector Storms before [214] in my life." I said, "You mean you did not see him before you came right here in this room?" He says, "I have never seen him before in my life." I said, "You know Inspector Foster, this gentleman here?" He said, "I never saw Inspector Foster before in my life." I said, "Mr. Storms, will you repeat again what you told me again about the transaction of purchasing or being offered some tires?" At which time, as I recall, Mr. Storms again went through and repeated that he had gone into this parking lot, after being at the Capital Auto Parks first, and there being interviewed by an attendant, then from there he had gone over to the station at Olympic and Hill and had met Mr. Rose, and that Mr. Rose at that time had of-

(Testimony of David M. Hoffman.)

ferred to sell him the four new tires for \$175 and the retreaded tires for about \$16 each.

I said, "Did he ask you or did you offer to state that you had any rationing certificate?" Mr. Storms said, "No." I then said to Mr. Rose, again, "Mr. Rose, did you offer to sell these new tires or retreaded tires to Mr. Storms?" He said, "I never saw Mr. Storms before in my life." To the best of my recollection, I then asked Mr. Rose how long he had been in the gasoline business. I fail to recall how long he said. I asked him if he had sold tires in the past and he said he had. I asked him if he sold tires without rationing certificates, and he said, "You can't sell tires without rationing certificates." I said, "Did you sell tires without rationing certificates?" He said, "I refuse [215] to answer."

And generally, from that point on Mr. Rose stated that he would refuse to answer any further questions. At the conclusion, I said, "Would you like to have counsel?" He said, "Yes." I said, "Very well; you can have counsel. Would you like to come back with your counsel on this matter?" He said, "I don't think I have to come back at all." I said, "Very well." At which time we concluded our conversation. That is the substance, as I can recall it, to the best of my ability at this time.

The young lady was not present during the first portion of the conversation. I then asked Mr. Rose, I recall now, if he had any objections to my hav-

(Testimony of David M. Hoffman.)

ing a stenographer come in and take the substance of the testimony; to which he replied, "No." So we called Miss Viley in and she proceeded to write down in shorthand. As to whether she went out of the room and then returned while Mr. Rose was still there—I believe she remained in the room. I know that she went out to transcribe her notes, but whether anything was said about returning I can't recall. I believe she came back while Mr. Rose was still there. I don't believe any transcription that she may have made was shown to Mr. Rose, although I can't recall definitely unless I were able to observe the transcription.

Cross Examination

By Mr. Goodman: [216]

I am an attorney-at-law. While I was in this office I had sitting next to me Mr. Foster, an investigator of the Office of Price Administration. I also had a stenographer from the Office of Price Administration. There were also there from the Office of Price Administration myself and Mr. Storms. I did not bring Mr. Rose. I did not request him to come at all. He came in with Mr. Foster and Mr. Storms. He came in with Mr. Foster. Whether it was at his request—I don't know—I was not there.

I believe that there was a statement to the effect that Mr. Foster had asked him to come down to the office.

As to whether the purpose at that time of my

(Testimony of David M. Hoffman.)

examination of Mr. Rose was to get him to make admissions or statements which I could subsequently use for the purpose of bringing a criminal proceeding against him— The purpose of that interview was to find out what Mr. Rose and Mr. Storms had to say about this matter. I didn't know. As to whether if Mr. Rose had said, "Yes; I have sold these tires," I would have brought criminal proceedings; whether that was the purpose of it— Not not necessarily. You can't convict him with his own statement. That was not the purpose of the hearings over there, to get these persons to come in there and to make admissions, and then to use the admissions against them.

The purposes of those hearings are to interview parties to find out what they have got to say about a transaction, not to obtain admissions. If, incidental to the interview [217] it happens to be that the man admits that, that is one of the things that takes place; yes.

I did not tell him at the commencement of the conference that any statements he might make in that office there would not be used against him and that I would give him immunity. I did not tell him that he had a right to have a lawyer until the conclusion of the conference. I didn't tell him that because I didn't know that there was anything involved in the matter until after Mr. Storms had recited the story. I did not tell him that he was entitled to a lawyer until the conclusion of the conference, after I had interrogated him on all

(Testimony of David M. Hoffman.)

these various questions and he refused to answer them.

When I found out as to Mr. Rose's position, I told him that he was entitled to a lawyer if he wanted. I have been a prosecutor for many years. Mr. Storms did not state there at any time at that conference that he had ever bought any new tires or tubes from Mr. Rose. Mr. Rose never admitted that he had either made a sale of new tires or tubes, or even offered to sell to Mr. Storms or anybody else. As to why, when I found out that no sale had been made, after talking to Mr. Storms, of any new tires and tubes, I continued cross-examining Mr. Rose, when I found no violations— As I was saying, I was not trying to force something down Mr. Rose's throat. I wanted him to tell me what he had to say. I wanted to find out what his position was and what he had to say about the matter, not to find out if he was guilty or innocent, [218] but to find out what he had to say.

As to the purpose of finding out what he had to say, when I found that no violation had been committed because there was merely an asking to sell and no sale—Mr. Storms had told me, in the presence of Mr. Rose, that Mr. Rose had offered to sell him tires, new tires, without certificates. That is a violation of the rationing law. I knew Mr. Storms before.

As to whether I had reason to believe him, more so than I believed Mr. Rose at that particular time

(Testimony of David M. Hoffman.)

—With the exception that I know Mr. Storms had worked with him. I did not know Mr. Rose at all. Mr. Storms was an OPA representative. He was not sent out by the Office of Price Administration to induce Mr. Rose to make a sale to him. He was sent out to investigate a complaint that had been received that Mr. Rose was selling tires, without certificates, for prices over the ceiling.

As to whether at that time Mr. Rose offered to sell Mr. Storms tires— That is what Mr. Storms told me, and in the presence of Mr. Rose. I don't know whether he did or not. I wasn't there. I don't know what took place when Mr. Storms was out with Mr. Rose. The first time I saw Mr. Rose was when he was in the office in the company with Mr. Foster and Mr. Storms. He was not handcuffed, he was not being held, he was merely there. Mr. Storms was not instructed by either me or anybody else in that office, to my knowledge, to go [219] out and to encourage retail gasoline station owners and proprietors in attempts to make sales to them so that they could get evidence on them. That was not the case here with Mr. Storms, to my knowledge. I don't know anything outside of my own knowledge. Mr. Storms is an investigator in the investigation department and I am enforcement attorney in the enforcement department.

As to whether at the conclusion of that conference I transcribed those notes and gave Mr. Rose a copy—I can't recall whether he was given a copy.

(Testimony of David M. Hoffman.)

It was taken down in shorthand. It would take some time to transcribe it. I recall, however, that Mr. Rose did not leave after my conference was terminated with him. He remained, I believe, with Mr. Foster for some time. I don't know how long.

(In Judge's chambers. Present: The Court; and Messrs. Norcop, Sullivan and Goodman.)

Mr. Goodman: My offer of proof is to prove by the witness Eisenhower that after he bought these tubes, he sold them to divers persons at a profit.

JOHN FOSTER,

recalled.

Direct Examination—(Continued)

By Mr. Norcop:

Referring to the 23rd or 24th of June, 1942, I was present on the occasion that Mr. Hoffman mentioned. There was present Investigator Storms, and the young lady who was taking down the dictation, and Mr. Rose, Mr. Hoffman and myself. [220]

As to whether I had any conversation with Mr. Rose before Mr. Hoffman met him—I had a brief conversation with Mr. Rose. I merely went in, with Mr. Storms, in to Mr. Rose's place of business, at Olympic and Hill, and asked Mr. Rose if he would get in the car and go over to the Office of Price Administration with us, which he did. Just we three. Nothing took place before Mr. Hoffman met Mr. Rose, or until we went into the office, and

(Testimony of John Foster.)

asked Mr. Hoffman if he would come into the office with us, and we went into another little adjoining room there, where Mr. Rose was seated, and we discussed the situation with Mr. Hoffman, and gave him the details of what had previously happened. That was in Mr. Rose's presence.

As to the substance of what was said and done when Mr. Hoffman was present and Mr. Rose was present—We told him that Mr. Storms had contacted Mr. Rose; Mr. Rose had made an offer to sell him some tires, and that I was standing across the street at the time, and that Mr. Rose was going to go in Mr. Storms' car with him to pick up these tires, and that Mr. Rose's father had seen me, and run over and whistled to Ben, called him back, and they backed up the car, and Mr. Rose looked and saw me, and went back over, and talked to Mr. Storms, and Mr. Storms drove out, and came to me, and told me they had refused to sell him. That was said in Mr. Rose's presence. We then gave Mr. Hoffman an understanding of what had happened. After that Mr. Storms and I [221] went in and asked Mr. Rose to go to our office, where he was introduced to Mr. Hoffman. We said that in front of Mr. Rose. Mr. Hoffman did the examining, to the best of my recollection; asked most of the questions. I think there were a couple of questions that I asked, but the majority of them were by Mr. Hoffman. After this statement had been taken from Mr. Rose, Mr. Rose told me that he would like to speak to me alone. I followed him

(Testimony of John Foster.)

outside. No one else went with me. We went out in the highway, toward the front door of 1033 South Broadway, where we stood. Mr. Rose asked me if I remembered seeing him any place, and I told him I didn't believe I did. He said "I know you. I have seen you up at Louis Vitagliano's, on his lot." I said, "What were you doing up there?" He said, "What do you think?" I asked Ben at that time to tell me, I said, "Why don't you come across and tell me what you know about this deal? It is going to make it a lot easier if you tell us all you know about these things, and let us get it over with." He said, "I don't think I can, as long as there is anyone writing down what I say." He asked me if I knew Les Carston, and I said I did not. He asked me if I knew Sam Weinstein, and I said I did. He said, "I know all of those boys too." I believe that was about the extent of the conversation on that date. And Mr. Rose asked me if the government was going to take him to lunch, and that ended it. That was the first time I had met Mr. Rose. I next met him two or three weeks after that date at his service station at 955 South Hill Street. I had a conversation with him. [222] No one was present but Ben Rose and myself. I went in to talk to Ben regarding another tire movement. I asked him if he knew anything about it, and he said he possibly did, but he didn't care to discuss it. So he said, "Jack", he said, "You are on the wrong side of this thing. Why don't you get wise ot yourself, and get in on the right side?

(Testimony of John Foster.)

There is some money to be made.” So I told him I wan’t interested. He said, “Well, I know where there can be a few thousand dollars picked up if you just lay off. I know one thousand you would get right away, and I know several others that you can get, and I would be glad to take care of it for you.” I told him I wasn’t interested in that at all; that I had a job to do, and I was trying to do it. About that time some fellow went by whom he knew—who Ben knew was in the tire business, those we had some trouble with, and he asked me if I saw Shorty go by, and I said yes. He said, “You had better get out of here.” I said “Why?” He said, “Those fellows don’t like to see you in here. They are liable to come back. I have gotten in trouble with them already, because they have seen me with you. If they see you in here a lot, they might think I am telling you a lot of things I shouldn’t.” Shorty is Shorty Herman Hoffman. Nobody concerned with this case. That was all that took place on that date. I believe the next time I saw Ben was when he came in to Mr. Dundas’ office. I believe Mr. Earnest was present also at that time, and if I recall, that was about the middle of July. This [223] was at 1037 South Broadway, in Mr. Dundas’ office. In the Office of Price Administration. There was a conversation then. Rose made—I don’t recall his exact words, but he said he knew he was in trouble, and he had been thinking it over, and he was just wondering how he could get out. He said, “I am willing to spend

(Testimony of John Foster.)

\$500, or whatever it is, to get out of this, and get clean and straight again." I don't recall who said it, whether Mr. Dundas or myself said it—we did not know how deep he was involved at that time, and we would like to have him tell us just how deep he was involved; what he had done. He said, "Have you ever been threatened?" We said no we had not. He said, "I have." He said, "Some of these boys I have been dealing with came around, and put a gun, laid a gun on the counter here, and said to me: 'You see this? You wouldn't want to be found lying around the road some place, would you?'" They asked him, "Do you know what that is?" He said, "Yes, it's a gun." And they said, "You wouldn't want it used, or anything, would you?" He said no. They said, "Just remember; you don't know anything when somebody comes around to ask you—" He said that in the presence of Mr. Dundas, and I believe Mr. Earnest was present. I was present, and Mr. Rose made the statement. That was the substance of it, only he said he couldn't tell us any more. We told him, so far as we were concerned we did not know just how deep he was in the thing, and if he wouldn't tell us we would have to continue [224] with our investigation. I believe that was about all; and at that time Mr. Rose shook hands with all of us, and left. I next saw Mr. Rose, I believe right after he bought the tires from Mr. Mike Kreling. I saw him at that time at his service station at 955 South Hill. It was possibly about a week afterward. I

(Testimony of John Foster.)

believe it was in the latter part of July. I was alone, and Mr. Rose was alone. I had a conversation. I asked Mr. Rose if he had purchased some tires from Mr. Kreling. He told me he had. I asked him where they were. He said he had them over in his garage. I asked him if it would be possible for me to see the tires and check them. He said that would be O. K.; he would be glad for me to see them, so I made an appointment with him—I forget when it was; within a day or two, and he was going to let me see these tires and tubes. However, he did not keep the appointment; and the next time I saw him was about August 10th or 12th, I believe, when I had learned that some tires had been sold to Benjamin Rose by Sam Kelber. I saw Mr. Rose in the parking lot that he ran, just off of the service station in the first block south of his service station on Hill Street; on the same side of the street, which would be the west side. No one was there but Mr. Rose and myself. I talked with him then. I asked him what he had done with these tires, and told him it would be absolutely necessary for me to see those tires. He told me he had them; he wouldn't let me see them until the first of the next month. [225] I told him I couldn't wait that long; I would have to see the tires. He said, "Well, if that's the case, why, you had better not do any more talking with me. I guess you had better see my attorney". I said, "Does he have invoices, or anything showing what happened to the tires?" He said, "No, he doesn't, but he should

(Testimony of John Foster.)

have, by the time you talk with him." He told me the name of his counsel. He gave me Mr. Benjamin Goodman's name and address. That was the substance of the conversation. The next time I saw Mr. Rose was, I believe, September 19, 1942. At, I believe, 613 North Virgil Avenue, Los Angeles. I was looking for a warehouse full of tires that there had been some rumor regarding. I was walking north on Virgil, right in front of 611, which was an empty grocery store building, and I saw Mr. Rose pull up to the lot right ahead of me. There was a service station lot, three or four pumps in the service station, and there was a building. It was on the west side of the street. He was coming south. I was walking north. He pulled up just as I crossed over the sidewalk. I was probably 30 or 40 feet from there. He saw me, and he just kept on going. At that time Mr. Rose was in his garage, in his car. There was a window, and as I looked through the window he saw me, and came back around, and stepped right in front of me. Mr. Harwood was with me at that time, an investigator with the Office of Price Administration. Mr. Rose asked me what I was doing there. I told him I was just out in that neighborhood, walking [226] around. I asked the same thing. He said that was what he was doing, but he had seen me, and he just stopped to say hello. We passed the time of day there on that occasion. Again he made the statement to me that he thought I was on the wrong side of this, and asked me if I was still

(Testimony of John Foster.)

fooling around with the OPA. I said I was. He said, "Well, you are still on the wrong side. I think you are dealing with some pretty tough boys. You are liable to get hurt." I told him I would take that chance. He said so long, and started his car, and left. Then I went to the rear of this particular building we were standing on the side of. I saw the windows were all covered over with cardboard, and I couldn't see in it. There was a little glass broken in the back of this, and there was a piece of tarpulin hanging over it, and it was hooked on both sides. In order to see in, I tore a hole in the tarpaulin, and looked in there. This place was, I would say, about a quarter filled with new tires and new tubes, and I then called our office, and got hold of Mr. Dundas, and advised him of that. I later saw Mr. Rose again. I think the same afternoon, at the same spot. Mr. Dundas was there; Mr. Earnest was there; Officer Doane left at the same time that I came on the scene. Officer Hamilton was there, and Ben Rose, and myself. Mr. Hamilton asked Mr. Rose if that was his tires in his place, and Mr. Rose stated that they were not. He asked him who they belonged to. He said he had sold them. He asked him to whom he had sold them. [227] He said that there were invoices to show that. He asked him if he had a key to the place. He said he did not. He asked him who had the key. He said the man he sold the tires to. He asked him if he rented this place. He said he

(Testimony of John Foster.)

did not; he did not know anything about it. Officer Hamilton asked him if he had a duplicate key. He said he might have one at home. He said "Well, let's go over there and see." So we started out, and Mr. Hamilton stopped and went over and talked to Mr. Dundas and Mr. Earnest. He came back, and put the handcuffs on Mr. Rose, reached in his pocket, and there was a chain hanging out of his pocket, and he pulled the chain out of his pocket, and said, "I want to see if these keys fit the door." He went back, and the first key he tried opened the door. He shoved Mr. Rose in. He said, "I thought you did not have a key." Rose did not say anything. We told Rose that we wanted to inventory the tires, and we proceeded to do so. By that time I believe Mr. Dundas had gone, and just Mr. Earnest, myself, and Officer Hamilton and Rose were present. We proceeded to take an inventory of the tires. There were exactly nine tires totally unwrapped, and we made a statement before Mr. Rose that we were getting the serial numbers, but decided not to, because there were so many wrappings on the floor, we did not want to unwrap any tires, so we didn't touch any tire that had a wrapper on it, other than counted it as a tire, and found out what kind it was. Nine tires were totally unwrapped. Officer Hamilton stated [228] that those were the only ones that would be likely to be stolen. They had quite a few burglaries around stations in that neighborhood, and he advised Mr. Rose that he

(Testimony of John Foster.)

would take those in, and run those, to see if they had been, stolen or reported as stolen.

I believe at that time Officer Hamilton and Benjamin Rose left, and I called a commercial photographer, who has testified here, and had him come over and take pictures of the interior of the building.

It was necessary to take more than one picture, because you couldn't get all the tires in one. He had to take one from one corner, and take the other one from the other corner.

As to whether there was any electric light in that room—There was an electric light in—there were connections in, but they were not turned on, so there was a lantern there, one of these upright flashlights—I guess you would call it a flashlight; more or less of the lantern type. We asked Ben if that was his. He said, "Yes. How are you going to see in the dark if you don't have a light?" We saw him again on that day. We counted the tires. I have a list of those. I believe there were 67, other than the nine, and if I recall correctly, there were 431 new tubes.

We had the photographer stay there with us to see that the door was locked, so that everything would be accounted for. Mr. Earnest and I left when the photographer left. We then proceeded to the Wilshire police station, and we [229] got over there and we met Benjamin Rose coming out. Ben's car was left over at 613, I believe it is, North Virgil, and he did not know how he was going to

(Testimony of John Foster.)

get back over there. Mr. Earnest and I had one more call to make. We told him if he would come with us we would probably be about ten minutes on the other call, and we would take him back to the spot. We went to the other place, and no one was home at the place, and we left. We weren't that long. So we took him back to his car. That was the last I saw of Ben on that occasion. I believe the next time I saw Ben to talk to him was on the occasion over at his other warehouse, or at another warehouse that he had rented on Sunset Boulevard. No one else was present. Just Mr. Rose and myself. That was on October 13th about 9:00 to 9:30 A.M. I had a conversation with Mr. Rose. I happened to be seated going down the street, and I saw Ben go into this driveway where the tires were. I waited for some time and then walked in. I believe I left my car outside, and I walked in. Mr. Rose was busy. He had a cream colored Oldsmobile; it had quite a large trunk over its rear, and the trunk was up. As I walked in, the rear had been filled with tires, and he had shoved some tubes in the side. He was covering them over with a blanket before letting the back of the car back down. I spoke to him. I got probably 20 feet from him before he saw me. I said, "Hello, Ben." He turned around, and he made the statement, he said, "Can't I do anything without you being on my trail?" [230]

I said, "I wasn't exactly on your trail. I have been here for some time."

(Testimony of John Foster.)

The door was open to this warehouse. He started to close it. I asked him if he would let me look in. He said he might as well. I looked in, I believe I counted 8 tires left of a large size, and close to 100 or over, new tubes, and the place was in the same condition as the other place and been on the day that we found it. In the center of the room were numerous wrappings of tires, and a large number of empty tube boxes. I made the statement that he had gotten rid of quite a few tires out of there recently. He asked me how I knew it. I told him I knew how many he put in there. He said, "You know where these came from, don't you?"

I said, "Yes."

He said, "Those are part of the tires I had in the Virgil Street warehouse. I split them up over there, and brought half over here." I said I knew that wasn't so. He said, "Are you going to fellow me on this delivery?" I said, "No, Ben, I don't think I will, but there's another boy down the street who probably will."

Then I remarked to Ben regarding his tracks. I said, "Ben, I wish you would get some different kind of tires on that car, because they are a sure give-away." I showed him the tracks that had been in there several times. I said, "Indirectly, did you make a good deal Saturday night?" He said, "Did you see me in here Saturday night?" I really did not [231] see him, but I told him I had. I told Mr. Rose that. I told him he was the last. I told him I was there the night before and had

(Testimony of John Foster.)

seen him, but I did call his attention to his tracks being in there, and even pointed at them while he was there. I don't believe he replied to that. I think he just laughed, and got into his car, and left. Only he locked up the door of his warehouse.

I don't recall just the date that I saw Mr. Rose on the next occasion. I do not know where it was. I believe it was when he came into the office. That was after the indictment was filed. I saw him one time right after that in a car with Mr. Ray Paddock, who was a witness here this morning, but I did not talk to him. I saw Mr. Rose after the indictment, though, in our office. He came in and talked to me. I first met Mr. Vitagliano, I believe on May 26th, 1942, at 12th and Stanford Place, Los Angeles, on the East Side. Mr. William Fitzer was with me, and there was no one at the time other than Mr. Fitzer and myself and Mr. Vitagliano. Conversation occurred.

We went to this premise, after receiving a call that there were two van loads of tires there. We drove in and went on back to this steel covered shed where these two vans were, and were looking around the vans, and Mr. Vitagliano came back and asked us what we wanted. We introduced ourselves as investigators from the Office of Price Administration. He asked us what we still wanted, that he did not see [232] any connection. We told him we wanted to know where the tires had come from. He informed us that he had already straightened that out with the police officers. We told him we would have

(Testimony of John Foster.)

to know also. He said, "Well, the tires don't belong to me, so there isn't must information I can give you." He said the police had broken his locks off. We told him that was a matter with the police department; that we had nothing whatsoever to do with it. He stated that the tires belonged to a friend of his by the name of Mr. Phil Taplin, and that Mr. Taplin had the invoices to show for it. And we asked him to get hold of Mr. Taplin for us. He said he would. So he went in and called for Mr. Taplin, and we had some other conversation with Vitagliano regarding what part he had played with the tires. He said he had no part whatsoever; that he was a friend of Mr. Taplin, and he was merely doing him a favor by letting him put trucks there, leave trucks there until he could find some storage space for them.

I am not sure whether Mr. Taplin came while we were there, or whether we left, and came back, but it was the same day we came back and saw Mr. Taplin. At that time we looked at the invoices.

I believe Mr. Vitagliano got the invoices, and handed them to us. I could be wrong in that; either he or Mr. Taplin. We scrutinized the invoices, and saw that they had come from the Perfect Made Tire Company, and asked Mr. Taplin what he [233] intended to do with the tires. He said he was buying up tires. He thought there would be a demand for them after the war. He had some money to spend, and he thought he would

(Testimony of John Foster.)

put in in tires, and just hold them until after the war, and he figures there would be quite an increase and demand for rubber tires, and he would make money on them.

We asked him, in that event why he did not get them in a bonded storage house. He said, well, he would, if he could find one. Mr. Fitzer told him that he knew a Bekin's warehouse, at Alameda, near Fourth, and they said that they would go over there.

We left and went over to Mr. Novisoff's. Later on in the day we came back by there around noon, and the trucks were gone. We proceeded toward the Bekins warehouse, and pulled up. We saw the trucks there, and saw Mr. Taplin and Mr. Vitagliano coming out of the office of the Bekins Storage Company, down the street. "We" are—Mr. Fitzer and myself. After they came out, and talked for a few minutes, and then got in the automobile and left, and at that point I went in to Bekins Warehouse. I stayed there all the rest of the day, with Mr. Fitzer, and that night around 5:00 o'clock or just a little after, they drove up. "They" are Mr. Vitagliano and two men, and I did not know anyone else that was with them at that time. The two men jumped in the car, jumped in these vans, and started away. Someone started up the car, and drove the car. One of the vans turned around, [234] and started away. We waited until the second one did. They kind of split up.

(Testimony of John Foster.)

We followed one of the vans up to 92nd and Crocker, where he went in to the Market Garage there, a little yellow garage, and they came out and left. They probably weren't in there more than 15 minutes.

After the trucks got in there I went on down and saw the trucks were backed up against the wall in there. I am not sure whether that night I watched all night or not, but I know we did call on the police department, and the police department and myself split up the time. I was relieving them around 3:00 in the morning, and they relieved me about 6:00 at night.

I watched there, I believe it was Tuesday, Wednesday, and Thursday, and Thursday about 11:00 o'clock a man whom I did not know before, but I found he was a new investigator—I just heard incidentally that every morning, and sometimes oftener in the day Mr. Vitagliano would come by in his car, and he would go by and look in the garage, and then would come my where I was. I left there on Thursday around 1:30 or 2:00 o'clock, and this man came over and relieved me. Shortly after that, probably at 3:30 or 4:00, we got a phone call from this other man that the trucks had moved, and they were now out at Wabash and City Terrace where it turns off, and Mr. Fitzer and myself were both in the office at that time, and we got in my car, and drove to this address, and [235] relieved this other man; told him to go back; and we sat there for an hour and a half or two hours, down the street, and

(Testimony of John Foster.)

then they pulled one van out while we were there, and drove the other one in. It was parked down the street a quarter of a block to a half a block.

They drove the other one past it; drove the other, and backed into the place. This was also behind a service station, and had big iron solid black doors. You can't see into the garage. They backed the truck in as far as it would go. My recollection is that it wouldn't go all the way in, but they had it well in, and pulled the doors by the car as far as they would go, so when we tried to get in we had to go underneath the truck, and go in. Mr. Fitzer and I walked in. Mr. Vitagliano, Mr. Taplin, and Mr. Weinstein were in there. They had just finished unloading these tires, and were stacking them up in this storeroom.

We had some conversation with them. I think the first thing they said "Well, it's a cinch we won't lose these tires. We are getting plenty of protection," and asked us why we didn't come a little earlier, so that we could help them unload. We told them all we wanted to know was where the tires were going. I don't believe there was much said other than we would send someone out to take an inventory of these tires, because we wanted to check and see if the amount of tires were still there that they had purchased.

Mr. Vitagliano followed me out, and said to me, "I hope [236] you don't worry about these tires, because Mr. Taplin is a fine boy. He won't do any-

(Testimony of John Foster.)

thing wrong. Don't worry about them, because they are in safe hands.'" Subsequently we did ask Mr. Taplin to come to the Office of Price Administration.

I believe that was all that happened at City Terrace. We got in our car and left. To the best of my recollection, I saw Mr. Vitagliano about June 3rd or 4th, a very few days afterwards. I had a conversation with him then, at Twelfth and Stanford. Mr. Fitzer was also there. It was regarding some other transaction.

The next time I saw him in reference to this case was probably in July at his service station on Twelfth and Stanford. Mr. Earnest was with me. There were none of his employees that were present. They were around the service station, but they weren't in hearing of us. We asked Mr. Vitagliano if he knew Mr. P. R. Brown, and he stated he did not. We asked him if he had bought any United States batteries, and he stated he had. We asked him where he bought those. He said from some fellow over on Temple Street. We asked him if he knew that was P. R. Brown. He said he did not know, but it was at 1019 West Temple. We asked him if he had used the name of Eazio, over at this place, in doing this. He said he had not. We asked him if he had gone with Mr. Urich over there. He stated he believed he had been introduced by Mr. Urich to this gentleman, but did not recall exactly what his name was. We asked him on that occasion

(Testimony of John Foster.)

if he had [237] taken the invoice with him after he had bought the batteries, and he said he certainly had not.

Mr. Angelillo: If your Honor please, I don't think this is germane. It has something to do with batteries.

The Court: I have been waiting.

Mr. Angelillo: We object to it upon the ground that it is immaterial.

(By the Witness:)

What I have just now been relating has a connection with this document.—Exhibit 30 for identification. I have seen that before. I saw it a few days before I went into Mr. Vitagliano's place of business to inquire whether or not he had been to Mr. P. R. Brown's place of business at 1019 West Temple Street.

Referring to the symbols or numbers at the top of this invoice, Exhibit No. 30 for identification; I made an investigation of the number at the top with the Department of Motor Vehicles. I found it was registered to Mr. Louis Vitagliano's sister, and it was the license number of the Chevrolet pick-up truck that was being used by Mr. Vitagliano, which was always on his lot. I saw it there myself. Car No. TOZ143 was a Ford coupe. We had some little time getting that, because it was in transit. It had belonged to Mr. Louis Vitagliano. He had sold it to Mr. George E. Wolfe, who was one of the employees of his. I did not discuss these license

(Testimony of John Foster.)

numbers with Mr. Vitagliano. I did not discuss [238] with Mr. Vitagliano, in connection with this transaction, whether he had been to 1019 West 53rd Street. I went to 1019 West 53rd Street, and found there was nothing there.

Mr. Norcop: We now offer this exhibit in evidence, if your Honor please.

Mr. Angelillo: If your Honor please, we object to it, particularly for the reason that most of it is hearsay, and further, the testimony of the witness does not correspond with the testimony of the witness who produced it in court this morning, or who identified it. The word "International" is written on it, indicating International truck. He testified apparently, from some investigation, which we do not know anything about, and the records of the Motor Vehicle Department would be the best evidence concerning the Chevrolet truck. Obviously, the Chevrolet and the International are not one and the same person, and there is no identification or connection shown so far that the defendant Vitagliano is connected with this Exhibit No. 29.

The Court: I was trying to think of the testimony of that witness. The witness identified one defendant, did he not?

Mr. Angelillo: Yes, he did identify Vitagliano. He was not sure about it, however, and one other defendant; I don't know which one it was.

The Witness: Mr. Weinstein.

Mr. Norcop: In that connection, I think I am correct [239] in recalling that the witness said he took these numbers down and placed them on there

(Testimony of John Foster.)

as one of these vehicles was departing from his station. The other one, I think he had gotten sooner.

The Court: I think it is admissible. The weight will be a question with the jury. I will admit it.

(The document referred to was received in evidence and marked Government's Exhibit No. 30.)

(By the Witness:)

At that time I believe that was all the investigation we had regarding that. We did make a trip back a few days later, and at that time I was also accompanied with Mr. Earnest, and we talked to Mr. Vitagliano at his service station at Twelfth and Stanford, right in front of it, and, as I recall, I asked Mr. Vitagliano something about his brother Tony, who is known as Tony Vit.

On that day he more or less blew up. We had a few words, which were quieted down in a very short time, and we went in the coffee shop, or a little restaurant, which was on the same lot, and Mr. Vitagliano apologized for blowing up, and told us he had a letter from Mr. D'Orr stating he could sell tires. He showed it to us. It seemed as though he had a few change-overs. He told me he had a few change-overs, and he figured they were used tires, and he wrote to Mr. D'Orr, and ask him if he could sell these, and Mr. D'Orr had answered that he could sell them if they were used [240] tires. That was all of the conversation, other than he said he hadn't sold any more tires. I think I was in

(Testimony of John Foster.)

there again. This time I was by myself. Mr. Vitagliano was there. I cannot give you any approximation of the date. It was just prior to the indictment, I believe. Mr. Weinstein in one of the truck had quite a few used tires on it. Mr. Weinstein told me he was in the tire business for himself, in the used tire business. Mr. Vitagliano went over to my car with me—I told him we had quite a bit of evidence that he was selling some tires to some squeegee place; and to the Gloege Coffee Company, and to some of the employees down at Bullock's or the Broadway, and he stated he had not since the freeze. He says, "Well, I will tell you; I have been implicated in a couple of loads of tires, but this you are not going to be able to implicate me in." So he laughed, kind of. I left. I believe that's the last time I had a conversation with Mr. Vitagliano regarding anything.

I met Mr. Taplin on May 26th, the same date I met Mr. Vitagliano. I have already told you what Mr. Taplin said to me down at Twelfth and Stanford. I had a conversation out at City Terrace. I have already related that conversation. Other than that, I have had some other conversation with Mr. Taplin I haven't mentioned. I went to Mr. Taplin's place of business about the middle of June. I believe I had another conversation after that, in the office. I was present at a conversation with Mr. Taplin about May 28th or 29th. [241] I am not sure. That was in substance what Mr. Dundas told about, when Mr. Taplin voluntarily gave a letter. I saw

(Testimony of John Foster.)

Mr. Taplin on more occasions than that. I saw Mr. Taplin a few days after he was in the office. He was going to find out for me, if he could, what happened to the 28 tires that were missing. I went out to see if he had. I saw him at his place of business. I believe it is 4441 Malabar Street. Mr. Earnest and myself were present. I had a conversation with Mr. Taplin. I asked him if he had found out anything about the tires and he told me that he believed that he had been shorted those tires; that they couldn't have gotten off unless the police stole them. I saw him several times but it was not pertaining to this case. I have talked with him with relation to his case, other than what I have related today or the other day. I saw him again either the last part of September or the first or second or third of October. I believe it is October 5th that I saw him, and at his place of business again. Mr. Earnest was with me on that occasion. I had a talk with him. I asked him for the invoices that I had talked to him on the telephone about. He had them ready for me and handed them to me, I looked them over. He had one invoice showing the sale, and three or four sheets showing the makes of the tires and all where he had sold these tires to Sammy Rappan, or Rappan Service, rather, signed by Mac R. Brown. On that occasion I asked Mr. Taplin how he come to sell the tires if Mr. Vitagliano and Mr. Weinstein [242] had sold them also, and he said they didn't own them, any part of them. I said "I thought you told me that

(Testimony of John Foster.)

in the presence of Mr. Dundas and Mr. Earnest, that these tires were only a third yours." And he said, "Oh, I paid them off a long time ago. They belong to me." I don't recall the amount of money that was there, but I asked him if Mr. Ben Rose had anything to do with those at all. He said, "Let them speak for themselves." He said, "I sold them to Mac R. Brown and that is his signature." I said, "Well, how did he pay you?" He says, "Cash." I said, "What did you do with the money?" And he said, "What do you usually do with money? I put it in the bank." And with that I got back in the car and we drove away." I believe that is the last time I talked to Mr. Taplin with reference to any matters that we have discussed here in this case.

I first met Sam Weinstein around May the 29th, and it was at 3200 City Terrace, while they were unloading the tires. I had no conversation with him at that time. I met him and that was all. I believe the next time I saw Sam Weinstein to talk to was at his service station on Riverside Drive and, I believe, Victory Boulevard, where they come to a point in Burbank. That was September, around the 12th or 14th. Before I saw Mr. Weinstein on the occasion just referred to, I had seen Mr. Brown. I saw him two days prior at 2824 Sunset Boulevard, in a Signal Oil Service Station. I had a conversation there with him. Donald Harwood was [243] present. I was alone. I believe it was on the next day that I asked him if he knew Mr. Weinstein and he said he did not. I showed him a card that

(Testimony of John Foster.)

I had picked up in his service station with Mr. Weinstein's name in one corner and Mr. Mac R. Brown's on the other, and he said, "Well, I know him, but I am not proud of it." I said, "What is the matter?" He said, "Well, we don't speak." He said, "We don't get along." And he says, "I don't have anything to do with him." I said, "When is the last time you ever saw Mr. Weinstein?" And he said, "Oh, it has been months."

Then I went down the street, after I had gotten this invoice, I waited for a while and watched the service station. Mr. Mac R. Brown got on the telephone and called several times. Finally he jumped in a red Pontiac car he had and started out. I followed him about a half a block or a block behind him, and he went over to Mr. Weinstein's service station on Victory Boulevard and Riverside Drive and drove in the driveway, and Mr. Weinstein was waiting there for him and he got in the car and they sped away. They got in the Pontiac car. They departed in the same car that I saw on Sunset Boulevard that I followed. I saw Mr. Weinstein about either the next day or two days thereafter at his service station, at the same place I have mentioned. I had a talk with him. There were others there. There were quite a few men there. One thing in particular I remember was Mr. W. H. Cottrell, an executive of the Texaco Oil Company. I talked [244] to him and only had a very few words with Mr. Weinstein. I asked him if he knew Mr. Brown—Mr. Mac R. Brown. I received the same

(Testimony of John Foster.)

answers, that he knew him but he didn't. I asked him if he knew where he was. He said, "No;" he didn't know much about him; that they didn't get along very well. I did not say anything to him then about that. I don't believe I ever talked to Mr. Weinstein regarding the case after that.

Cross-Examination

By Mr. Goodman:

On this first occasion that I met Mr. Rose I went out there to his place of business with an OPA investigator by the name of Mr. Storms. Prior to going out there I did not have arrangements with Mr. Storms that he was going in to the station of Mr. Rose and endeavor to buy some tires. The occasion of Mr. Storms and I going out there was Mr. Storms had talked to Mr. Rose, and he called him up on the telephone that morning. I was there when he called him on the telephone. And he talked to Mr. Rose and Mr. Rose told him to meet him at 11:00 o'clock at Olympic and Hill and he would have some tires for him. The arrangements I knew nothing about before that. Mr. Storms did not just call Mr. Rose on the telephone for the first time and state he wanted to buy tires. Mr. Rose asked him to call him at home, is what Mr. Storms told me. I don't know that. I don't know how Mr. Rose had met Mr. Storms before that telephone con- [245] versation. Only what Mr. Storms told me. Mr. Storms had told me that he talked to Mr. Rose some time or other prior to the date that this call was made that I overheard.

(Testimony of John Foster.)

As to whether I went out there on that occasion with Mr. Storms for the purpose of seeing if the sale was going to be made and making an arrest if it was made—I went to see if the sale was going to be made, but about the arrest I don't know about that. I have never had a badge with me in my life. When I went out there I did not stay in the car *on out* outside of the station. I stood over right across the street on the corner. I was in a position where I could see what was going on. I had previously discussed with Mr. Storms how the two of us were going to work this particular matter; I was going to stand outside and Mr. Storms was going to go in there, so that I could observe the sale and be a witness to it. Mr. Storms went in there and no sale was made. When I saw that no sale was made, I didn't walk into the station. I waited. I was walking down the street and Mr. Storms came down and met me, and my car was parked and we got in my car and drove into the service station. Storms came back and I found out there was no sale, and we went back to Mr. Rose's station, the two of us. That is the first time I met Mr. Rose. At that time I had a conversation with him. I did not ask him if he would not become an informer on behalf of the Office of Price Administration and tell me all about various tire deals that he knew about. [246] I asked him what he knew about the various tire transactions that were going on. This was after Mr. Hoffman talked to him. This first time I went out there to get him on a sale and didn't get him.

(Testimony of John Foster.)

and I went back with Mr. Storms into the station. I did not ask him to become an informer. I never used those words before in my life. I had not prior to that date parked my car in his station. I had not parked my car in his station after that date. As to whether I ever parked my car in his station—While I was sitting in it I might have gotten out probably for two or three minutes. As to parking it by paying him for parking—in his service station, I never parked there. I did not ask him to find a customer to buy my car. I would have taken around \$1250.00 for my automobile. I would like to have taken that. As to whether it was a 1939 and was worth about \$500—it was a 1940. I did not ask him to find a purchaser. There was some conversation between Mr. Rose and I concerning my car. I told Mr. Rose that I was going to sell my car; and he said, “I will make a deal with you.” And I told him that I was not interested. And he called me up—in fact, a couple of times—and told me that he had around a \$700 deal or something, and I still told him that I was not interested. I did not tell him I wanted \$1200. I didn’t give him any price. I have related everything that took place on this first occasion to the best of my knowledge. I asked Mr. Rose why he did not proceed to consummate the sale of Mr. Storms that I knew [247] he was going to make. He told me that he thought better of it. And would not make the sale. At the time that Mr. Storms and I went out to Mr. Rose’s station I did not already know that Mr. Rose had bought some

(Testimony of John Foster.)

tires from a place in Ontario. He had not purchased any tires at that time. I did not know that he had bought any tires from any source up to that time. I had no information about any purchases by him at that time. I believe the next day I saw him was about two or three weeks after that date. I never asked him to become an informer at any time. On that occasion I did not discuss with him the sale of my car.

As to whether when I went out there on that second occasion I had received any information or knowledge that Mr. Rose had bought any new tires and tubes from a retailer who was liquidating—Only that Mr. Rose told me on the first occasion that he was mixed up with the tire boys in some deals. He told me he was mixed up with Mr. Vitagliano and some of them, so I knew that he was, from his own lips.

As to whether I knew that he had bought tires legitimately, as a retailer—

He didn't break it down, whether it was legitimate or illegitimately. He used the phrase "mixed up", as well as I recall. He said he had been *instigated* or mixed up. I wouldn't say that he used exactly those words with Mr. Vitagliano. I am sure he told me that in substance. He used the names of some persons with whom he was mixed up. He used [248] Les Carson, Louis Vitagliano and Leo the Lion. I had met Mr. Vitagliano. Mr. Paddock, to my knowledge, has never been an OPA

(Testimony of John Foster.)

representative and he has never worked for the Government at any time, to my knowledge. Mr. Rose and I never discussed the subject matter that our representative of the Office of Price Administration would steer sales to legitimate retailers where other retailers were liquidating, at any time. The third occasion is when I saw Mr. Rose at Mr. Dundas' office in the middle of July, 1942, to the best of my recollection. As to whether up to that time I had made any investigation or received any knowledge that Mr. Rose had bought any new tires from any retailer who was liquidating, other than from the lips of Mr. Rose—I don't believe that we had then, whether that was before the Kreling deal or not.

As to the occasion for Mr. Rose coming into Mr. Dundas' office in the middle of July, 1942—Mr. Rose came in voluntarily. We had no knowledge that he was coming in. As to whether on that occasion he and I and Mr. Dundas had quite a kidding conversation—I would not say it was entirely kidding; we might have kidded a little bit after—not kidded, either, after the thing was over, that he knew better than we did to what extent he was mixed up and it was up to him to get himself cleared up. At that time any information that we had he was mixed up in anything that was unlawful was just hearsay. Mr. Rose and Mr. Dundas and I [249] were not kidding back and forth during that entire meeting about

(Testimony of John Foster.)

this gun and about this \$500 and all the facts that I spoke about. That was a very sober part of the meeting when Mr. Rose told us about the gun. He was very serious about it, and that was his reason for not giving us any more information about any of the activities. He told us he couldn't give us any of it; that he was mixed up and he wanted to get right, and if it was a matter of \$500 or \$1,000, why, that he could contribute to the OPA or anything else, he would be glad to do it so he could get a fresh start.

As to why I didn't arrest him if he made that kind of a statement—I have not power to arrest. Mr. Dundas has no power to arrest. We had nothing to arrest Mr. Rose for. We had complaints that he had committed an offense, but our investigation was not entirely closed at the time. At that time we did not decide we were going to shadow and trail Mr. Rose until we could get enough evidence on him. This investigation was not secretive at all. Practically everything I learned I discussed with Mr. Rose and I practically begged him—I won't say exactly—but I implored him on several times why he didn't cut out his activities that he was doing and it would save him a lot of trouble. It is not a fact that all the information that my office had about these matters I got from Mr. Rose directly. I did just previously, in answering your question, state that I did get the information from Mr. Ross up to that time. [250]

(Testimony of John Foster.)

As to whether my office, on the occasion when he said that Mr. Goodman was representing him and that I would get the invoices from you and whether I didn't get invoices sent to the Office of Price Administration from your office in which you gave my office copies, not only of all the purchases made by Mr. Rose which have been testified to in this case, the one in Ontario, the one in Pasadena, but also copies of the invoices showing the sales to the Golden Lubricants—I picked them up at your office on one occasion, after calling you for them, and they were not as I had asked for them.

Mr. Goodman: Now, I demand that they be produced at this time, and I understand you have them here, Mr. Norcop.

Mr. Norcop: Everything that you have asked for. At this time, if the court please, in the interests of justice, I think that, in view of the court's ruling, the government, which is not here to prosecute any person improperly moves to dismiss Mr. Lieb, because there will be nothing further and I anticipate the court's ruling and I would agree with the court's ruling. We will save his counsel an effort of making a motion to dismiss.

The Court: The court feels that the motion should be granted and Mr. Lieb's indictment, so far as Mr. Lieb is concerned, dismissed and bond exonerated. [251]

JOHN FOSTER

recalled.

Cross Examination—(Resumed)

Mr. Norcop: Do you want us to produce now what you asked about?

Mr. Goodman: I would like to do it through the witness your Honor.

The Witness:

As to whether it is a fact that I received from your office a copy of the purchase by Mr. Rose of the tires from the location in Ontario, California; that is the last one I called you for, and this is the one you sent to me through the mail, a copy of the purchase from Ontario.

(Counsel has handed the witness a document from the files and records of Government counsel.)

I am not sure whether the original of this purchase is now in evidence. As to Government Exhibit 14, I did not receive that portion of the exhibit which is the first document in the exhibit, which is invoice 7441, along with the document which you first showed me, which is a copy of that invoice. I picked that up at Sam Kelber's, out in Ontario, California. As to whether I did have notice from Mr. Rose that I find on this particular purchase—not notice; I knew of it before I asked for a copy of the invoice. I knew about it before, and then when I got the copy of the invoice, I knew the number of tires, the number of tubes, and the purchase price.

(Testimony of John Foster.)

(The document referred to was marked Defendant's Exhibit No. 8, for identification.)

As to whether I have related to the court, or any of the government witnesses related to the court all of the information and knowledge that I have pertaining to sales of tires made by Mr. Rose, I wouldn't attempt to answer that [252] question, because there may still be some; in fact I am sure there is still a sale that has not been referred to. As to this other document, which also comes from the Government counsel's files and records, I believe I did receive that document from your office. I believe this is one of the ones I asked you to have certified as correct, and you stated that you couldn't do so. I did not ask you for certified copies, I asked you to have Mr. Rose have this certified as being correct and a legitimate sale by Mr. Rose. Mr. Rose's signature was already on it.

Whether I would introduce here in evidence a sale to the Golden Lubricants, which is Government's Exhibit 28, and whether I can state to the court and jury why this particular sale and transaction was not previously brought to the attention of the court and jury, I couldn't answer that, because I am not sure that it was not. I have not since this trial started made an attempt to come to your office to ask for the original invoice of that particular transaction. I was in your office before the trial. I picked up the documents that I asked for; I have not been back there since.

(Testimony of John Foster.)

(The document referred to was marked Defendant's Exhibit C for identification.)

As this copy of invoice which also comes from the files and records of government counsel, and whether I received that document with the same letter of transmittal, with the documents that have been previously identified by [253] me—I picked this up in your office, yes, when I requested you to have it for me. I picked this up at Mr. Kreling's. I got the original of Government's Exhibit No. 10 from Mr. Kreling, who was the seller of the tires to Mr. Rose. Mr. Rose, through you, furnished me with a copy of that invoice which I picked up at your office, at my request.

(The document referred to was marked Defendant's Exhibit D for identification).

As to this copy of another invoice dated September the 5th, 1942, and whether I got that from your office along with the other documents which I have previously identified, yes, I picked this up—well, I got it from your office, at any rate. I can't say whether this is one I got through the mail or whether I picked it up at your office. As to whether I knew when I received the copy of the invoice from your office, whether it was in person or by mail, that Mr. Rose claimed that he sold 48 new tires and 130 new tubes to the Golden Lubricants, Inc. on September the 5th, 1942, I knew that prior to picking it up; that is why I asked for it. I asked Mr. Rose what he did with

(Testimony of John Foster.)

the tires. He told me he sold them to Joe Munn, like he did the rest of them.

(The document referred to was marked Defendant's Exhibit F for identification.)

I can't answer yes or no whether Mr. Rose had previously informed me that the tires which he had purchased from Sammy's Auto Shop in Ontario, from Mr. Slavett in Pasadena, [254] and from Mr. Mike Kreling, and from Sam Kelber he had sold to the Golden Lubricants, Inc. As to the tires that he had purchased from Ontario, he told me he had sold those to Joe Munn. He did not give me any other information, other than Joe Munn. There was nothing else said about any name of purchaser other than Joe Munn. I couldn't tell you whether that is the same Joe Munn whose name appears on the invoice of September 5, 1942, as a representative of Golden Lubricants, Inc.

As to whether actually, before the indictment was returned in this case, I either had knowledge from sources other than Mr. Rose, or from Mr. Rose directly, or through you as his attorney, of all of the purchases of tires and tubes from the four transactions which have been related in this courtroom that he purchased, I don't believe I did on the Slavett tires. I am not sure of that, but I don't believe I ever asked for the Slavett sale. I received the documents for every purchase that I asked for.

I had knowledge or notice, either from independent sources, or from Mr. Rose, or from you as his

(Testimony of John Foster.)

counsel, that Mr. Rose had purchased new tires and tubes from Ontario, from Mr. Mike Kreling and from Sam Kelber.

Before the indictment was returned, I know how or through what means I discovered the sale of the new tires and tubes to Mr. Rose by Mr. Slavett. I discovered that when I called on Mr. Humbert of the Bay Cities Transfer Company. [255] He told me that he had picked up tires at that address. I had not previously to that date made arrangements with Mr. Humbert, that he was to notify me of any and all movements of tires made on behalf of Mr. Rose. I made such arrangements upon that call that I found out he had picked up tires at 1850 East Colorado, Pasadena, California. I can't recall the exact date of that particular call. I believe it was in September. It was after the sale to Mr. Reuben Slavett by Mr. Rose. Possibly two weeks. Coming back to the original conversation that I had with Mr. Rose, I stated yesterday that I had previously had a conversation with Mr. Storms, also an investigator of the OPA; as to whether it is a fact that Mr. Storms had previously told me that he had had a conversation with Dave Rose, the brother of the defendant, Benjamin Rose, in reference to the sale of new tires—I can't answer that correctly because I don't recall whether he told me Ben Rose or Dave Rose. It could have been Dave Rose. It is not a fact that when Mr. Storms and I then drove into the gasoline station after I saw that no sale was

(Testimony of John Foster.)

made, the first thing I said to Ben Rose: "Where is Dave?" I couldn't say whether Mr. Storms said it or not. Dave's name was not mentioned at that time to the best of my knowledge. It is not a fact that Mr. Ben Rose answered and said, "He isn't here". I didn't say, "Why, I can see his car there". Mr. Rose did not answer, "Why, Dave had just went down to the Marine Recruiting Office." No such [256] conversation in my hearing ever took place. When in a previous answer I said, "Not at that time", I did not have reference to some other time that I may have had a conversation in which Mr. Dave Rose was involved.

The only other conversation is that at one time Ben told me that his brother was going in the navy or was in the navy. That is all that was said. There was nothing about any marine corps or anything ever mentioned, because I never inquired about it. That was not the same time Mr. Ben Rose said he was enlisting in the navy, that was at some other time.

Yesterday I testified that I did not park my car at Mr. Rose's station. As to whether I parked my car on many occasions a half a block south of Olympic and Hill at one of the parking stations of Mr. Rose—that is at a parking lot, and I gave you a statement I never parked in his station. I never did. I parked at a lot across the street; it has no name on it, to the best of my knowledge. I

(Testimony of John Foster.)

couldn't tell you who owns it. I paid for my parking every time I ever parked. As to whether I know that is Mr. Rose's parking lot, Mr. Rose was never there. I saw him in front of the lot on one occasion.

It is not a fact that on this occasion when I had this alleged conversation in which Mr. Rose said, "Why don't you come over on my side?" that at that time I told him that I was not making very much money working for the OPA; that I was losing my [257] home, but that I had to stick with the OPA because they had already got me two deferments and I wanted to stay there and stay out of military service. At no time did I ever make such a statement to Louis Vitagliano. I did not get two deferments.

If Mr. Rose, on one occasion, fixed my automobile, something wrong with the electrical system, while that car was on one of his parking lots, he certainly did it in my absence. I knew nothing of it. I never asked Benjamin Rose to sell my car. I told him I wanted to sell the car.

On the occasion when I went out to 613 North Virgil Avenue, when these pictures were taken, I did not know prior to that date that there were new tires and tubes stored at that address. The date of that occasion, to the best of my knowledge, was September the 19th, on a Saturday. I hadn't found out prior to that date that Mr. Rose had to move the storage of his new tires and tubes from 613 North Virgil to the place on Sunset and Bron-

(Testimony of John Foster.)

son. I had not found out prior to that date through the truck driver, Mr. Humbert, and through my investigation of all the purchases in Pasadena, and from Mr. Kerling, that the tires had been delivered to 613 North Virgil. I first found out that they had been delivered to 613 North Virgil after September the 19th, after I found that warehouse filled with tires.

I went out there definitely. At that time, I did not know that those tires belonged to Ben Rose. I never did [258] find out definitely that they belonged to Mr. Rose because he denied that they belonged to him. Whether the police officer took the key out of his pocket against his will, he still denied that they were his. I didn't find out definitely then. I couldn't say that I know now that they are his tires. I have a pretty good idea, but I couldn't state that I know that they are his.

Mr. Goodman: At this time I ask that those four tires from the Hertz car, or one of them at least, be brought into the court room.

(By the Witness):

I did not ever find out definitely that Mr. Rose owned any of the tires that were returned in the Hertz truck. As to those four tires that came from the Hertz Driverless Company, I picked them up there, around October the 5th. I made a record of the pick-up of those tires. I made it on a piece of paper, and I think I still have that piece of paper. I did not mark the tires in any way. I took the

(Testimony of John Foster.)

tires and tagged them as they are tagged now, if you will notice, and on that very occasion. As to this one of these tires and this white tab, that is in my handwriting. I wrote that at that time.

(Counsel reads.)

“Ben Rose—Picked up a Hertz-U-Drive October 5—42—Foster.” [259]

(By the Witness):

As to where I got the information at that time that these tires belonged to Ben Rose, Mr. Mendenhall of the Hertz-U-Drive told me that Benjamin Rose hired the truck and Benjamin Rose did not bring it back, but that Benjamin Rose came back again and asked him for the four tires that were in the truck, and he referred him to Mr. Begley. I was here in court the other day when he testified that he did not know who came to call for the tires. I am certain he told me that Ben Rose called for the tires. Based upon that statement, I tabbed these tires as Ben Rose's tires. I did not see the tires returned.

My conclusion, that they were Ben Rose's tires was not based upon—that is, the record that I made here, that tab, was not based upon what the gentleman told me at the U-Driver's place. Those are some of the tires that were at 3200 City Terrace. I knew that Benjamin Rose picked up those tires, even though they were billed out to Mac R. Brown, and they had those tires taken out to a certain place. I know that because Mr. Humbert told me.

(Testimony of John Foster.)

When I got out there at 613 North Virgil, when I saw Mr. Rose there, that is, when he drove up, I had not found the warehouse full of tires at that time. When I did find the warehouse with the tires, I had no knowledge at all whether they were stolen property or were not. Prior to the time that I went there, I had not called the Wilshire [260] police station and asked for two officers to come out, particularly Officer Hamilton. I called them after I found the warehouse. After I saw Mr. Rose on the first occasion that day. I called the police officer to see what was in the warehouse, and I did not have any powers at all to go in that warehouse to find out who it belonged to, or anything else. At that time I did not know whether it was Mr. Rose's warehouse, or whose it was. I did not have a search warrant. I did not ask the police officer to get one, when I came out there. When the police officer arrived there, and Mr. Rose refused to deliver the key to the place, I believed he had a key. I did not at any time ask the police officer Hamilton to open up the place, to get the keys from Mr. Rose. I was standing by. I cannot recall that Mr. Rose was there the first time Mr. Hamilton arrived. I don't recall what was the first thing I said to Officer Hamilton in the presence of Mr. Rose.

As to whether I recall telling him "There are some new tires and tubes stored in this place. We would like to get in there"—I told him we would like to get in there, yes. After I got in there, I did not have a picture taken of the place, without mov-

(Testimony of John Foster.)

ing any of the tires or boxes or paper, or empty boxes, as reflected in this picture. Practically everything in the place was moved. This picture does practically reflect the appearance of that room as it was when I first walked in. After we got in there, the first [261] thing was to take an inventory of the tires, and in inventorying the tires, we moved them. We took an inventory of the tires. We had to move them to take it. We kicked the wrappings aside quite a bit, and in doing so, we had to move some of the tubes to get at the tires. After that we kicked the wrappings back, as nearly as we could, with our foot, as they were originally, and we did move the lantern that was in there, so that it would show in the picture. We did not have to move any tubes out of the boxes. We moved the tube boxes. As to whether we took a tube out of a box, and put it on top, so it would reflect in the picture—I don't say we did not. I don't remember. I could have.

If I recall correctly, I took an inventory of 67 tires plus the nine that were taken into the police station. The nine tires that were taken to the police station were the only tires not wrapped at all. How many were partially wrapped, I couldn't say. I don't remember. No tires were left in the place entirely unwrapped. We did not unwrap any, or take one wrapping off of a tire. In taking the inventory, I don't believe any paper fell off. We were careful, because we did not want to do that. To take that inventory, I would say it didn't take us more than a half an hour. Mr. Rose was not

(Testimony of John Foster.)

there all that time. I believe Mr. Rose left toward the end. I am not sure whether Mr. Rose was there when the photographer was there. If he was, he was not there very long after the photographer got there. I believe they left. [262] It is not a fact that he was there when the picture was taken. I believe we called the photographer before taking the inventory. I couldn't be sure of that. I don't believe we waited until the inventory was taken, and then called him. It could have been, however.

There were nine tires unwrapped. I thought if there were any stolen tires in there—we had no knowledge of where the tires came from, and I wanted to check those tires, and I suggested the only ones Officer Hamilton take would be the ones which were unwrapped. As to whether I remember my testimony yesterday that the reason they were taken was because I wanted them to be taken there so they wouldn't be stolen, because they were unwrapped—no, sir, I did not make any such statement, I believe. I did not ask Officer Hamilton to take the tires. He took them voluntarily. I did not later get a telephone call from Mr. Hamilton telling me that he was going to release the tires to Mr. Rose. I got one from Hamilton asking me if he could release them. I told him no, I would refer it to Mr. Dundas. I believe I talked to Mr. Dundas. Then I told him, so far as I was concerned, "You will have to have them there." I don't believe Mr. Dundas told me to release them. At that time Officer Hamilton did not tell me over

(Testimony of John Foster.)

the phone that he had already told Mr. Rose to come up and get his tires. He told me, if I recall, that Mr. Rose was up there in a truck to pick them up. After speaking to me, he told me he would tell Mr. Rose [263] he couldn't deliver the tires. The purpose of my holding the tires at that time, when I found out they were Mr. Rose's was I knew that the tires were not legal. I did not just testify that I knew these tires came from a certain place, because at that time I didn't know where these tires came from. As to whether I know now—I am not sure. I know two loads were put in there, and where those came from, but as to all the tires put in I couldn't testify where they came from. Confining the tires to the nine tires, I do not know where they came from. On this day I did not know where they came from. Mr. Rose did not tell me that these tires from the warehouse at 613 North Virgil had been sold to the United States Defense Supply Corporation. I did not ever check to see.

(Counsel shows the witness a document.)

That's the first time I ever saw that. I have seen a form of that kind before. I know what it is. It shows a purported sale to the Defense Supply Corporation of the United States Government. That does not require a certificate.

(The document referred to was marked Defendants' Exhibit F for identification.)

(Testimony of John Foster.)

Cross-Examination

By Mr. Angelillo:

The first occasion that I saw Mr. Vitagliano, I believe was May 26, 1942, at 12th and Stanford. I don't believe I [264] ever asked him to come to my office. I did not ascertain whether he had one or more service stations at that time. I found out subsequently that he had two. I know the address, but I don't know the name. I never heard of Louie's Super Station. I never knew Signal Motor Service belonged to him. I know where that is, but I never knew that it belonged to Vitagliano. I have been to Stanford Motor Service. I knew that was his.

(Two letters are produced.)

As to these two letters, I saw two similar. I imagine they are the same ones.

(The documents referred to were marked Defendants' Exhibit G, for identification.

I saw these two letters either on May 26th, or the following call that I made to Mr. Vitagliano. I discussed the contents of these two letters. There was present William Fitzer, Louie Vitagliano, and myself. Mr. Vitagliano showed us the letters, and told us that he had authority to sell a few tires that he had, and that this was his authority, and we told him that Mr. D'Orr was wrong on it; that had he come out and looked at the tires he would have been wrong, but up to that date it was probably all right, as long as he had the authority for Mr. D'Orr.

(Testimony of John Foster.)

That discussion could have taken place at the time that the trucks were there. I couldn't say whether it was on that date, or the following call. We were not by the trucks. The freeze order was effective, on new [265] tires December 12, 1941, at midnight. The freeze was continuous from that day to now on new tires, under regulations. We had regulations handed to us by our office. I became an officer of the OPA office the first of April, 1942.

As to Exhibit No. 30, I saw that for the first time, I believe, probably two weeks or a month after it happened. I got that from W. J. "Bill" Davis, he calls himself. The witness who testified on the stand. I checked the Office of the State Board of Equalization, at 1031 South Broadway. I checked the Department of Motor Vehicles. The record from the Department of Motor Vehicles indicating the ownership of the Chevrolet, I got over the telephone. I asked for the license number, because Davis had told me he was not sure what kind it was. I couldn't say who wrote the word "International" on that. It was on there when I got it. I have not had occasion to check the books of Mr. Vitagliano.

As to whether I have had occasion to check the original inventory at our office, pertaining to Mr. Vitagliano, I don't believe we have, not to my knowledge, an inventory at our office of Mr. Vitagliano. An inventory is made by any service man if he had tires on or about January 5, 1942, indicating the number of tires he had in his possession. I did have a discussion of Mr. Vitagliano as to the

(Testimony of John Foster.)

one-third interest that he had in the tires purchased by Mac Brown prior to the time they were purchased by Mac Brown. Prior to the time that these tires were purchased by Mac Brown, if we are talking [266] about the same tires that were purchased, I talked to Mr. Vitagliano about his one-third interest in those tires. I mean prior to the time that that sale was made to Mac R. Brown, Mr. Vitagliano told me that in fact he owned practically all of the tires; that he had put up most of the money himself, and that they were all his; that they did not belong to him; they had a slight interest, but it did not amount to anything; that the tires were practically his.

As to whether it is a fact that in the conversation, after the tires were purchased by Mac R. Brown, that I told Mr. Vitagliano that Mac Brown told me that he, Vitagliano, had a one-third interest in the tires, I haven't talked to Mr. Vitagliano since that time about the tires, and I haven't seen Mac Brown until he came to court here, since that time. Mac R. Brown bought those tires on September 29th, I believe it was.

As to this truck that Mr. Graham testified about here the other day, there was some transaction had on or about September 9, 1942, wherein Mr. Vitagliano was a purchaser or in any wise connected with that transaction. There is some evidence in this case about it. That sale was the one that Parsner sold purportedly to Mac R. Brown. As

(Testimony of John Foster.)

to whether Mr. Brown subsequently told me that Mr. Vitagliano had an interest in that sale, Mr. Brown told me that he did not know; Mr. Vitagliano never had told him.

As to whether it is a fact that when Mr. Brown was at [267] my office, on one occasion, and he was asked for a letter in my presence by Mr. Dundas, he told me at that time that Mr. Vitagliano had a one-third interest in that deal that he had; Mr. Brown was never in my office, to my knowledge; not in my presence, anyway, and I do not know anything about such a conversation. I could have had a conversation about a month or so ago with Mr. Vitagliano. Where that meeting was, I do not recall. I saw Mr. Vitagliano once, I believe, at our office, and once at his station, but we did not discuss the trial; only he told me, regardless of how it came out, he hoped I had no hard feelings against him, and I told him the same. There was no discussion about where he got the tires, or anything else.

As to whether it is a fact that I told him, "Louie, the only thing I knew about your transactions, is that you purportedly loaned some money to these fellows, because you sold your stations, and you got the interest on your money," that conversation never took place with me, and not any similar conversation. He told me he was not worried at all about the case from the start. He told me that his skirts were clean. They all did. He told me that at the first meeting that I had, he told me that these

(Testimony of John Foster.)

two trucks were at his place of business there merely as an accommodation.

As to whether he on one occasion, in September of 1942, told me that he was at Ontario when these tires were loaded on the trucks, I never discussed Ontario with Mr. Vitagliano. [268] I did not have such conversation.

Redirect Examination

By Mr. Norcop:

(By the Witness)

Mr. Goodman asked me if I had had a conversation with Mr. Rose regarding Joe Munn. I had such a conversation, I believe it was in October at his service station at Olympic and Hill. There wasn't any one else there. Mr. Rose asked me if I had found Joe Munn yet. I laughed and said, "Oh, sure, I found him." He said, "That's a good thing, because I have sold him some more tires."

SAMUEL KILBURN DOWDEN,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

In 1942, I was a truck driver for the Bay Cities Moving & Storage in Los Angeles. I believe it was jointly owned by J. J. and C. A. Humbert.

(Testimony of Samuel Kilburn Dowden.)

Last summer I went with one of the trucks of that concern to Ontario. I started from the place of business on Melrose. There were two trucks. Don Parmalee was the other driver. We went to Main Street in Ontario. I did not pick up a load there. We went out in the side of town; I don't know which direction. That was a [269] residence. I see some one here in court now that I saw at that residence on that date, known to me as Sam Blank; the only name I know of. I refer to the man in uniform. (Defendant Race was present at the counsel table and was wearing a uniform.) I did not see any one else among the people sitting to your left there—not for certain. As to who else was there when I saw the man Sam Blank, I don't know any of the names. About four or five people there. Mr. and Mrs. Humbert went out there. They were not there when I arrived. I think they arrived a few minutes later.

As to any conversation I had with this man Sam Blank before Mr. and Mrs. Humbert arrived, I don't believe anything much more than out of the ordinary. Mr. and Mrs. Humbert had a discussion. After the trucks were loaded I drove one of them back into town. I drove the truck to, I think it was about 613 on Virgil. I unloaded it there. I believe the invoice was receipted for in my presence, after the truck was unloaded. I believe I signed it, even. Exhibit 19, is the one I referred to. That is my signature. I do not recall seeing the writing put on there.

(Testimony of Samuel Kilburn Dowden.)

Cross Examination

By Mr. Goodman:

(By the Witness)

I did not see this man sign: Ben Rose. I turned the copy of that invoice over to Mr. Humbert. Mr. Humbert, I believe, got the signature. I had it all the way to Ontario. While I had it in my possession, I did not see the signature of Ben Rose on it. I did not look at it that closely, as I [270] remember. I have, from that date, before I came to testify here today, discovered that Ben Rose had signed that delivery ticket. I knew it was Rose, before I came to court here. I did not make any other deliveries of tires.

(A man stood up at the request of Mr. Angelillo.)

Prior to today I would say I have seen this gentleman before. Where, I can't say.

WILLIS S. STORMS,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

I am an investigator for the Office of Price Administration, an agency of the United States Government. I entered on that employment May

(Testimony of Willis S. Storms.)

1st, 1942. I have been to 819 West Sixth Street in Los Angeles in June 1942. I was on the premises. After I arrived at that location there at 819 West Sixth Street, I had a conversation at that location. I received a document from the person I had the conversation with.

Mr. Goodman: I object to it as incompetent, irrelevant and immaterial, and no foundation laid. What person?

The Court: I am going to overrule the objection as a preliminary question. [271]

(By the Witness)

This document is the one I received on that occasion.

(The document referred to was marked Government's Exhibit No. 31 for identification.)

After receiving this document, I went to 955 South Hill Street to a parking lot.

Mr. Norcop: We offer the document in evidence.

Mr. Goodman: Objected to as incompetent, irrelevant and immaterial, no foundation laid.

Mr. Sullivan: No connection with the defendants.

The Court: Not in evidence.

(By the Witness)

After I arrived at 955 South Hill, I saw an attendant there.

Mr. Goodman: I move that that be stricken as being a conclusion of the witness. If he knows his name, let him state his name.

(Testimony of Willis S. Storms.)

The Court: The motion will be denied.

Mr. Goodman: May I take the witness on voir dire for that one question, your Honor?

The Court: No. We are going to move along here.

(By the Witness)

I did not see the defendant Mr. Rose there on that first occasion. I was there at the location about five minutes. I returned about 2:00 o'clock in the afternoon, June 24th. I did not then [272] see Mr. Benjamin Rose. I came back at 5:00 o'clock. I saw a man that represented himself to be Benjamin Rose or Ben Rose. I see Mr. Rose here in the courtroom. That is the man. I had a conversation with him. No one else was present there in hearing of the conversation. It took place in the little office building on the lot, gas station office.

I said, "Ben?" He said, "Yes." "I want to see you for a minute." He says, "What about?" I said, "Tires." He says, "What kind of tires?" I said, "New tires." "Who sent you?" I said, "The old gentleman down on the parking lot on Sixth Street." "Why didn't he fix you up?" Mr. Rose continued. "He told me that I would have to see you; that you were the owner." Rose then said, "How many tires do you want and what size?" I said, "Well, it depends on the price." And then he said, before I continue further, he said, "Have you got any identification?" And I said, "What for?" He says, "I can't afford to take any chances,

(Testimony of Willis S. Storms.)

you know." I said, "Well, I have got the money to buy the tires and that is all I want to discuss with you." He said, "Well, I should know something about you. Have you got a business card or something?" I said, "No." I said, "You are not going to get me in any trouble and I am not going to tell you who I am. In fact, it is none of your business." He looked me over pretty carefully. And he said, "Well, what size?" And I said, "6.50 x 16s." Rose said, "Well, I can give you four beautiful new tires, Goodyear or Miller, for \$175."

I said, "I could not probably afford that much." I [273] asked him how much new retreads would be. He says, "I will give you four dandies for \$25 apiece." I said, "Well, I haven't got the money with me, but when can I get the tires?" He said, "Well, what do you want to do? Do you want new tires or retreads?" I said, I don't know."

So he handed me a parking ticket with a telephone number on it, and said, "Call me up at this telephone number tomorrow morning and tell me what you want and I will tell you where to meet me."

This is the ticket that he gave me. Writing was placed on there in my presence by Mr. Rose.

(The document referred to was received in evidence and marked Government's Exhibit No. 32.)

I left the premises at 955 South Hill Street. I returned to those premises again the following

(Testimony of Willis S. Storms.)

morning at 11:00 o'clock. I saw Ben Rose at the same location, 955 South Hill Street. I had another conversation with him. There was present in the hearing of the conversation a young man known to me or introduced himself to me as David Rose, said that he was Ben Rose's brother. That was all that was present in the hearing of my voice, so far as I know. I arrived at this parking lot at 11:00 o'clock, and was greeted by this young man representing himself as David Rose. Ben Rose arrived a very few minutes after I arrived on the parking lot. Ben Rose immediately started to question me again as to my identity.

He said, "I have got to know something about you." [274] And I said to Rose, "I thought we had discussed that yesterday." He said, "Well, who are you?" And I said, "It is none of your business." And I repeated, "You are not going to get me into any trouble and I haven't got any papers." He said, "I am not worried about that and I can't afford to take any chances." I said, "Well, what about the tires? Where are they?" He said, "Well, we have to go over here a few blocks." He said, "What did you decide on?" I said, "Two new 6.50 x 16 tires and two new retreaded tires."

Ben Rose and his brother and I started to walk off the lot, when the defendant said, "Well, let's get in your car," meaning my car. I started the car and had driven approximately 25 or 30 feet when the defendant asked me to stop, and both he

(Testimony of Willis S. Storms.)

and his brother got out of the car and walked over a short distance, I would say 20 feet or 30 feet, to the parking lot attendant. He came back and said, "I guess we can't do no business, Mr." I just brandished my hand casually, got in my car and drove off the lot.

Cross Examination

By Mr. Goodman:

No sale was made. I went there in the performance of my duty. In the performance of my duty, I was not exactly going to try to get him to make a sale. When I first went in there I did not tell him who I was. I did not tell him at any time that I was from the Office of Price Administration. All my conversation was pertaining to the purchase of [275] new tires or retreads. It is not a fact that the man I saw the first and second times was David Rose, and not this gentleman here, Ben Rose. I am not confusing the two gentlemen. I am positive. The gentleman who represented himself to me as David Rose looked like Ben Rose, and I would say he was about 20 to 22 years old, not quite as tall as Ben. I don't recall any other particular features of the gentleman. The one that I talked to the first time in my life at 955 South Hill Street was an old gentleman there. As to David Rose and Ben Rose, the one I spoke to first was Ben Rose.

The attendant that I saw there on the first occasion, I don't know his name. He was at 955 South Hill. On the second occasion, when I went there at 2:00 o'clock, when Mr. Ben Rose was not

(Testimony of Willis S. Storms.)

there, I don't recall to whom I talked. I would not be sure if that was David Rose. After I got in my car and left, when there was no deal made and they told me they couldn't sell me any tires, I got in my car and drove away. I went over to my office. We were only a block away from the office.

I think I met Mr. Foster on the street. While I was in there trying to make this deal, he was across the street. I went around the block because he was not there when I left, he was not across the street when I left the premises of Dave Rose's parking lot. I did not subsequently pick him up across the street. I picked him up I believe on Hill Street, between Tenth and Eleventh. When I left Mr. Rose and his [276] brother, I met Foster less than five minutes. At that time I had a conversation with Mr. Foster. I told him what transpired.

I don't recall whether I told him that there was a David Rose there. As to how I knew that this gentleman's name was Ben Rose when I first walked into the station, I addressed him in a questioning manner, with a raise of an inflection of my voice. I said, "Ben?" I knew his name was Ben because the attendant at the parking lot on Sixth Street told me to ask for Ben Rose. That is why I used "Ben Rose".

Mr. Norcop: We now offer this ticket into evidence again.

Mr. Goodman: Object to it on the ground it is incompetent, irrelevant and immaterial; it does not

prove or disprove any issue in this case and no foundation laid.

Mr. Norcop: Very well, the government rests, if the court please.

(Whereupon the jury retired from the courtroom and the following proceedings were had in their absence:)

The Court: Preliminary to making your motion, I think that the court should make a statement and it may save some time, that, in the first place, the court is going to require the government to elect between counts. The court, however, feels that the evidence is sufficient to submit this case to the jury as to all remaining defendants. There was some doubt in my mind as to one defendant until I reviewed part of the [277] record. So the court may be, in a sense, prejudging things that are to come, but I will make that statement so that you can make your formal motions and protect your record.

Mr. Norcop: We will elect to stand on the first count.

Mr. Goodman: May the record show that the second count is being dismissed?

The Court: Yes, the record will show that the second count will be dismissed.

Mr. Goodman: At this time, your Honor, we move, first, to strike all the evidence of any statements, admissions and declarations of any and all of the defendants made at divers times, on the ground that the agreement, contract, or conspiracy, or corpus delicti, is not established, and therefore,

those statements and admissions are not admissible for the purpose of proving any conspiracy, agreement, or contract, and cannot be used to establish the agreement, contract or conspiracy, without corroboration. That's my first motion.

The Court: Motion denied. I understand these are made for and on behalf of each and every defendant?

Mr. Goodman: Yes, unless I made a motion on behalf of any one defendant.

We also move at this time that all of the evidence be stricken on the ground that there has been no corpus delicti proved, no contract, or agreement, or conspiracy, and that all of the evidence that is in the record has not been tied up with the defendants in showing that they had agreed, or [278] contracted, or had entered into a conspiracy, to violate any law of the United States Government, among themselves.

The Court: Motion denied.

Mr. Goodman: I now move to strike the testimony of Mr. Storms and Mr. Foster pertaining to the attempted sale, by either Ben Rose or David Rose, to Mr. Storms, on the ground of entrapment.

The Court: The motion will be denied.

Mr. Goodman: I at this time, on behalf of Mr. Rose only, move that all the testimony between Mr. Foster and Mr. Vitagliano, outside of the presence of Mr. Rose, and pertaining to an alleged transaction in this case with which Mr. Rose had no connection, be stricken as not having been connected up with him in any manner, shape or form.

The Court: That motion will be denied.

Mr. Goodman: I move, on behalf of Mr. Rose, that all of the evidence——

Will the record show that I did not ask an exception to each one of those?

The Court: They will all be deemed excepted to; that you requested an exception and exception noted. I am glad to co-operate with you, to protect your record.

Mr. Goodman: I move to strike from the record, on behalf of the defendant Rose only, all of the testimony of the first Government witness, Henry Novisoff, concerning the sale of new tires and tubes to the defendant Taplin, and the [279] testimony of Mr. Foster in connection with that alleged transaction, and the documentary evidence in connection therewith showing the sale by Henry Novisoff to the defendant Taplin, and then a sale by Taplin to the defendant Brown, which was also testified to by Mr. Foster. I move that all that evidence be stricken upon the ground that Mr. Rose has not been tied in with that alleged transaction, in any manner, shape or form, either by way of purchase, delivery, or sale of said tires.

The Court: Motion denied, exception allowed.

Mr. Goodman: I move to strike all the testimony of—this is on behalf of Benjamin Rose again—of Mr. Soukesian—he was the eighteenth Government witness, pertaining to an alleged sale of tires by him, as a retailer, to Mac Brown, a defendant, and in which Mr. Weinstein acted as the broker; and I saw that all of the evidence in the

record pertaining to that sale to Mr. Brown, including the documentary evidence introduced to show the sale, and all of the documents in evidence pertaining to any delivery of those tires, be stricken, upon the ground that Mr. Rose has not been connected up with that alleged transaction, either directly or indirectly, and there is no showing that he ever formed any contract, agreement or conspiracy, with the other defendants in this case, in connection with that transaction.

The Court: Motion denied.

Mr. Goodman: Exception. [280]

The Court: Exception noted.

Mr. Goodman: I believe I have to make a specific motion on the testimony that does not pertain to Mr. Rose, and I believe the other defendants have to make similar motions on the testimony that did not apply to them. We could have a general motion, with the understanding that it is a general motion, to strike all testimony or transactions pertaining to a certain defendant, in which the other defendants were not involved, either directly or indirectly. That could be done, having in mind that we might be able to accomplish it in that form.

The Court: The only thing is, the court feels that there is sufficient evidence here to justify permitting this case to go to the jury, and it is for the jury to determine whether there were one or more conspiracies involved in this case, and what parties are involved in it, or whether it was one general scheme. So, with that thought in mind, the motions are mere formalities, so far as the court is con-

cerned at this time. At the same time, I desire to have you do whatever is necessary to fully protect your record.

(Following a recess the following proceedings were had in the absence of the jury.)

Mr. Goodman: On behalf of the defendant Benjamin Rose I now move to strike the testimony of John Dundas, chief investigator for the OPA, of an alleged conversation between [281] him and Mr. Taplin in June of 1942;

And I move to strike the testimony of Mr. Parsner, who testified concerning a transaction between himself and Mac R. Brown on September the 9th, 1942, and the Government Exhibit 22 in connection with that transaction by which 38 tires were sold to Mr. Brown;

And the testimony of Mr. Frank Montgomery, who testified concerning the invoice to Mr. Brown and also the picking up of the tires by a truck;

And the testimony of Mr. Henry Immerman, who testified concerning the fact that his retail sales tax permit number AS-17452 was used in the transaction by which Mr. Brown purchased some tires, and that he was in the piano business;

And I move to strike all of that testimony on the ground that all of the testimony had nothing to do with Mr. Rose, was not connected up with him directly or indirectly. He had nothing to do with that transaction or any of the transactions mentioned in those motions, or mentioned or testified to by those witnesses.

The Court: Motion is denied.

Mr. Goodman: Exception allowed, and may the record show I have taken an exception to any and all previous rulings on motions made by me and they were allowed?

Now, one other motion on behalf of Mr. Rose. I move at this time that the court instruct the jury for a directed verdict of acquittal against the defendant Rose. [282]

The Court: Motion denied.

Mr. Goodman: Exception.

Mr. Sullivan: On behalf of defendant Taplin, at this time I move to strike from the record all of the testimony of the witness Isenhower relative to a sale by Mr. Rose to him of certain tubes, 36 in number; and also, the evidence of Mr. Isenhower relative to the delivery of those tubes and the payment for the same.

On behalf of the same defendant Taplin I move to strike all admissions in the record in which he is not directly tied to or directly connected to any of the acts or asserted violations referred to in the record.

On behalf of the defendant Weinstein I make the same motion to strike from the record all admissions to which he was not a party, and which did not directly tie in into any transaction spoken of in the record.

And I make the same motion with reference to the defendant Mac Brown and submit those motions to the court.

The Court: Motion denied and exception noted.

Mr. Sullivan: On behalf of the defendants Taplin, Weinstein and Mac Brown I at this time also move the court to instruct the jury to return a verdict of not guilty.

The Court: Motion denied.

Mr. Sullivan: May I have exceptions to the rulings, your Honor?

The Court: Exceptions noted. [283]

Mr. Angelillo: May it please the court, on behalf of the defendant Vitagliano I move that Exhibit No. 30 be stricken from the evidence; also, the testimony with respect to the sale to Mr. Isenhower of the 36 tubes by Rose; further the admissions, declarations and statements by Foster wherein Vitagliano is mentioned; and the statements purportedly identifying Mr. Vitagliano at Ontario, Mr. and Mrs. Humbert.

Mr. Angelillo: And I further ask the court to direct a verdict, or have the jury return a verdict of not guilty for the defendant Vitagliano, and ask for a directed verdict.

The Court: The motions will be denied and exception allowed to each and every of the motions.

(Following a recess the following proceedings were had.

(Jury present.)

Mr. Goodman: At this time, may it please the court, the defendant, Benjamin Rose, rests.

Mr. Sullivan: As to the defendants Taplin, Weinstein and Mac Brown, they also rest.

Mr. Angelillo: May it please the court, the defendant Vitagliano rests. [284]

INSTRUCTIONS

The Court: You have heard the arguments and I only wish to make this comment on the arguments: and that is that the five defendants here are no trial. You are not concerned with any crimes or any misbehavior of anybody else but these five defendants, and you are not here to try the police departemnt of Los Angeles or the operatives of the O. P. A. You are not here to approve or disapprove of any conduct of the defendants in this case. I make that comment in order, as Mr. Norcop says, to get you back on the beam, that there is only one issue before you and that is whether or not the defendants in this case are guilty or not guilty.

By the finding of an indictment no presumption whatsoever arises to indicate that a defendant is guilty, or that he has had any connection with, or responsibility for, the act charged against him. A defendant is presumed to be innocent at all *states* of the proceedings until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element of the offense charged. Mere suspicion will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your minds when, after fairly and impartially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the most im-

portant and vital matters relating to [285] your own affairs.

Reasonable doubt is not a mere possible or imaginary doubt or a bare conjecture; for it is difficult to prove a thing to an absolute certainty.

You are to consider the strong probability of the case. A conviction is justified only when such probabilities exclude all reasonable doubt as the same has been defined to you. Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given to you.

In judging of the evidence, you are to give it a reasonable and fair construction, and you are not authorized, because of any feeling of sympathy or other bias, to apply a strained construction, one that is unreasonable, in order to justify a certain verdict when, were it not for such feeling or bias, you would reach a contrary conclusion, and, whenever, after a careful consideration of all of the evidence, your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt, or there is a reasonable doubt as to whether the evidence is so balanced, the conclusion of innocence must be adopted.

You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to [286] speak the truth. This pre-

sumption, however, may be repelled by the manner in which he testifies; by the character of his testimony, or by the evidence affecting his character for truth, honesty and integrity or his motives; or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence, or may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men. You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relation which he bears to the Government or the defendants, the manner in which he might be affected by the verdict and the extent to which he is contradicted by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury should distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony.

The law is that a defendant charged with the commission of a crime is not compelled to take the witness stand and testify in his own behalf, and that his failure so to do shall raise no presumption of guilt nor entitle any inference of that kind to be drawn from such conduct of his. You are not limited in your consideration of the evidence to the bald [287] expression of the witnesses; you are

authorized to draw such inference from the facts and circumstances which you find have been proved as seem justified in the light of your experience as reasonable men.

There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that by which men give their attention to any question depending upon evidence presented to them. You are expected to use your good sense, consider the evidence for the purposes only for which it has been admitted, and in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to deliberate and cautious judgment; and while remembering that the defendants are entitled to any reasonable doubt that may remain in your minds, remember as well that if no such doubt remains the Government is entitled to a verdict. Jurors are expected to agree upon a verdict where they can conscientiously do so; you are expected to consult with one another in the jury room and any juror should not hesitate to abandon his own view when convinced that it is erroneous. In determining what your verdict shall be you are to consider only the evidence before you.

The law under which the indictment in this case is drawn provides that if two or more persons conspire to commit any offense against the United States, and one or more of them does any act to effect the object of the conspiracy, [288] each of the parties to such conspiracy is guilty.

In order to establish the crime charged, it is necessary, first, that the conspiracy or agreement to commit the particular offense against the United States as alleged in the indictment be established, and secondly, to prove further that one or more of the parties engaged in the conspiracy has committed some act to effect the object thereof.

To constitute a conspiracy it is not necessary that two or more persons should meet together and enter into an express or formal agreement for the unlawful venture or scheme, or that they should directly, by words or in writing, state between themselves or otherwise what the unlawful plan or scheme is to be, or the details thereof, or the means by which the unlawful combination is to be made effective. It is sufficient if two or more persons, in any manner, or through any contrivance, positively or tacitly come to a mutual understanding to accomplish a common and unlawful design. In other words, when an unlawful end is sought to be effected, and two or more persons, actuated by the common purposes of accomplishing that end, work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy. The success or failure of the conspiracy is immaterial, but before the defendants may be found guilty of the charge it must appear beyond a reasonable doubt that a conspiracy was formed as alleged in the indictment, and that the defendants were [289] active parties thereto.

In order to warrant you in finding a verdict of guilty against the defendants, or any of them, it is

necessary that you be satisfied beyond a reasonable doubt that a conspiracy as charged in the indictment was entered into between two or more of the defendants to violate the law of the United States in the manner described in the indictment. It is necessary further that, in addition to the showing of the unlawful conspiracy or agreement, the Government prove to your satisfaction, beyond a reasonable doubt, that one or more of the overt acts described in the indictment was done by one or more of the defendants or at their direction or with their aid.

Under the charge made the conspiracy constitutes the offense and it must be made to appear from the evidence, beyond a reasonable doubt, before any defendant can be convicted, that such defendant was a party to the conspiracy and unlawful agreement charged, and that he continued to be such up to the time that overt acts were committed, if the evidence shows that there were any such. The mere fact that either or any of the defendants named may have engaged in the performance of any of the acts charged in the indictment as overt acts, would not authorize a conviction by reason of that fact alone, but it is necessary to show that such defendant or defendants were parties to the conspiracy and unlawful agreement before their guilt of the offense charged is made out.

Each party must be actuated by an intent to promote [290] the common design. If persons pursue by their acts the same unlawful object, one performing one act, and a second another act, all with

a view to the attainment of the object they are pursuing, the conclusion is warranted that they are engaged in a conspiracy to effect that object. Cooperation in some form must be shown. There must be intentional participation in the transaction with a view and purpose to further the common design. And if a person, understanding the unlawful character of a transaction, encourages, advises, or in any manner, with a purpose to forward the enterprise or scheme, assists in its prosecution, he becomes a conspirator. And so a new party, coming into a conspiracy after its inception, with knowledge of its purpose and object, and with intent to promote the same, becomes a party to all of the acts done before his introduction into the unlawful combination, as well as to the acts done afterwards. Joint assent and joint participation in the conspiracy may be found, like any other fact, as an inference from facts proved.

Where the existence of a criminal conspiracy has been shown, every act or declaration of each member of such conspiracy, done or made thereafter pursuant to the concerted plan and in furtherance of the common object, is considered the act and declaration of all the conspirators and is evidence against each of them. On the other hand, after a conspiracy has come to an end, either by the accomplishment of the common design, or by the parties abandoning the same, [291] evidence of acts or declarations thereafter made by any of the conspirators can be considered only as against the person doing such acts or making such statements. The declara-

tion or act of a conspirator not in execution of the common design is not evidence against any of the parties other than the one making such declaration.

The evidence in proof of the conspiracy may be circumstantial. Where circumstantial evidence is relied upon to establish the conspiracy or any essential fact, it is not only necessary that all the circumstances concur to show the existence of the conspiracy or fact sought to be proved, but such circumstantial evidence must be inconsistent with any other rational conclusion. That is, you are to consider all of the circumstances and conditions shown in evidence, and if it appears to you as reasonable men that, even though there is no direct evidence of the actual participation in the alleged offense by the defendants or either of them, a reasonable inference from all of the facts and circumstances does to your minds, beyond a reasonable doubt, show that the defendants, or some of them, were parties to the conspiracy as charged, then you should make the deduction and find accordingly.

It is not necessary that it be shown that any person concerned in the alleged conspiracy profited by the things which he did, but if any of the defendants, with knowledge that the law was designed to be violated in the particular [292] manner charged in the indictment, aided in any way by affirmative action in the accomplishment of the unlawful act, they would be guilty. To this statement there is one exception, and that is, if before any overt act has been committed on the part of any conspirator or at his suggestion or with his aid or participation,

any such conspirator withdraws from the project or the carrying out thereof, he ceases to be a conspirator and is without guilt.

A conspiracy cannot be established by mere suspicion, and evidence of mere relationship between the parties or association does not establish the fact of conspiracy. It is equally well established that the mere knowledge, acquiescence or approval of an act without cooperation, or agreement to cooperate, is not enough to constitute one a party to a conspiracy. There must be intentional participation in the transaction with a view of the furtherance of the common design or purpose.

It is not essential that each conspirator have a full knowledge of all the details of the conspiracy or the means to be used, but it is essential that a defendant, in order to be guilty, must have joined in the agreement.

I have stated to you that the offense may be established by circumstantial evidence; but circumstantial evidence, to warrant a conviction in a criminal case, must be of such character as to exclude every reasonable hypothesis but that of guilt of the offense charged to have been committed by the [293] defendants, or in other words the facts proved must be all consistent with and point to his guilt only, and inconsistent with his innocence. The hypothesis of guilt should flow naturally from facts proved, and be consistent with them all. If the evidence can be reasonably reconciled either with the theory of innocence or with guilt, the law requires that the

defendants be given the benefit of the doubt, and that the theory of innocence be adopted.

You are instructed that any retailer or distributor may deliver, ship or transfer now tires or tubes to any warehouse or premises owned, operated or controlled by such person, provided there is no change in ownership or control involved in this delivery, shipment or transfer.

You are further instructed that records of such delivery, shipment or transfer should be kept and reports in connection therewith should be made as may be required by the Office of Price Administration.

You are instructed that at the time of the alleged overt acts claimed to have been committed by the defendants by the government, the following rules, regulations and directives of the Office of Price Administration were in full force and effect:

Transfers to Liquidate Stock

(1) By a Retailer. Any retailer may (without certificate) transfer any new tire or tube to any retailer, distributor, wholesaler, or manufacturer.

(2) By a Distributor. Any distributor may (with- [294] out certificate) transfer any new tire or tube to any manufacturer.

(4) Records. Any person making a transfer pursuant to subparagraphs (1), and (2) and (3) of this paragraph (c) shall keep records showing the name of the person acquiring a new tire or tube, the number, size, and type

of the tire and tube acquired, the sales price, and the date of shipment or delivery.

The defendants are charged with conspiring to violate those certain regulations of the Office of Price Administration, which prohibit the sale of new tires and tubes, without a tire rationing certificate of tire rationing local boards, and unless you find it was the object of the conspiracy, if you find such conspiracy existed, to sell new tires and tubes to users or consumers without such certificates, then I instruct you to find the defendants not guilty. On the other hand, if you find beyond a reasonable doubt that said defendants or some of them conspired together for the purpose of selling new tires and tubes to users or consumers without requiring the furnishing of local tire rationing boards' certificates, then I instruct you to find such defendants that participated in said conspiracy, guilty as charged.

You are instructed that if I have said or done anything which has suggested to you that I am inclined to favor the claims or position of either party, you will not suffer your- [295] self to be influenced by any such suggestion.

I have not expressed, nor intend to express, nor have I intimated nor intend to intimate, any opinion as what witnesses are, or are not worthy of credence; what facts are, or are not, established; or what inference should be drawn from the evidence adduced. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

At times throughout the trial the Court has been called upon to pass on the question whether or not certain offered evidence might properly be admitted. With such rulings and the reasons for them you are not to be concerned. Whether offered evidence is admissible is purely a question of law, and from a ruling on such a question you are not to draw any inference as to what weight should be given the evidence, or as to the credibility of a witness. In admitting evidence, to which an objection is made, the Court does not determine what weight should be given such evidence. As to any offer of evidence that was rejected by the Court, you, of course, must not consider the same; as to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

If in these instructions, any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any indi- [296] vidual point or instruction, and ignore the others, but you are to consider all the instructions and as a whole, and to regard each in the light of all the others.

The verdict to be rendered must represent the considered judgment of each juror.

In order to return a verdict it is necessary that each juror agree thereto. Your verdict must be unanimous. [297]

EXCEPTIONS

The defendants except to the following errors in the record of the trial and proceedings:

1. The defendants except to the indictment and to the order overruling the demurrers to the indictment on each of the grounds therein specified.

2. The defendants except to the order overruling the defendants' demand for a bill of particulars.

3. The defendants except to the constitutionality of the statutes, rules and regulations under which the prosecution was attempted to be had.

4. The defendants except to the ruling of the court denying the motion to continue the case on account of the physical condition of defendant Benjamin Rose.

5. The defendants except to the order of the court denying defendants' motion at the opening of the trial that the court require the Government to elect upon which count the Government will proceed.

6. The defendants except to the ruling of the court overruling the motion to dismiss the charges on the opening statement of the prosecution.

7. The defendants except to the order of the court denying defendants' motion to dismiss each of the two counts to the indictment or that the court instruct the jury to return a verdict of not guilty as to each defendant on each count. [298]

8. Defendants except to the order of the court permitting Government counsel to make a further opening statement to the jury after Government counsel had made his first opening statement.

9. Defendants except to the use of evidence illegally seized in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

10. Defendants except to the ruling of the court refusing to direct verdicts of acquittal at the conclusion of the Government's case and at the conclusion of the trial.

11. Defendants except to the rulings of the court denying the motions to strike the evidence of any statements, admissions or declarations of any or all of the defendants on the ground that there was no proof of any conspiracy or any corpus delicti.

12. Defendants except to the order of the court denying defendants' motion to strike the testimony of the witness, C. A. Humbert, that when he took the tires from Pasadena to 613 North Virgil Avenue that very few tires were left.

13. Defendants except to the order of the court sustaining the objection of Government counsel to the question asked of the witness, Leo Isenhower, as to whether or not he had disposed of any of the thirty-six tubes by sale.

14. Defendants except to the order of the court denying defendants' motion to strike all of the evidence. [299]

15. The defendant Rose excepts to the order of the court denying the motion to strike the testimony of Mr. Storms and Mr. Foster pertaining to an alleged transaction in this case with which defendant Rose had no connection.

16. Defendants except to the order of the court denying the motion of defendant Rose to strike all of the testimony between Mr. Foster and Mr. Vitaliano outside the presence of Mr. Rose and pertaining to an alleged transaction in this case with which Mr. Rose had no connection.

17. Defendants except to the order of the court denying the motion of defendant Rose to strike all of the testimony of Henry Novisoff concerning the sale of new tires and tubes to the defendant Taplin and the testimony of Mr. Foster in connection with that alleged transaction and the documentary evidence in connection therewith showing the sale by Henry Novisoff to the defendant Taplin and then a sale by Taplin to the defendant Brown.

18. Defendants except to the order of the court denying the motion of the defendant Rose to strike all of the testimony of Mr. Soukesian pertaining to an alleged sale of tires by him as a retailer to Mac Brown and in which Mr. Weinstein acted as the broker and the evidence pertaining to that sale to Mr. Brown including the documentary evidence introduced to show the sale and the documentary evidence pertaining to any delivery of those tires.

19. Defendants except to the order of the court denying [300] the motion of the defendant Rose to strike the testimony of John Dundos of an alleged conversation between him and Mr. Taplin in June of 1942.

20. Defendants except to the order of the court denying the motion of defendant Rose to strike the testimony of Mr. Parsner concerning a transaction

between himself and Mac R. Brown on September 9, 1942, and Government Exhibit 22.

21. Defendants except to the order of the court denying the motion of defendant Rose to strike the testimony of Mr. Frank Montgomery concerning the invoice to Mr. Brown and the picking up of the tires by a truck.

22. Defendants except to the order of the court denying the motion of defendant Rose to strike the testimony of Mr. Henry Immerman concerning the fact that his Retail Sales Tax Permit No. AS-17452 was used in the transaction by which Mr. Brown purchased some tires and that he was in the piano business.

23. The defendants except to the orders of the court refusing to strike the testimony of Mr. Storms, Mr. Foster, Mr. Henry Novisoff, Mr. Soukesian, John Dundos, Mr. Parsner, Frank Montgomery and Henry Immerman.

24. Defendants except to the order of the court denying the motion of defendant Rose to strike all of the testimony on the ground that it had nothing to do with Mr. Rose and was not connected up with him directly or indirectly.

25. Defendant Rose duly excepts to the order of the [301] court denying the motion of defendant Rose for a directed verdict of acquittal.

26. Defendant Vitagliano duly excepts to the order of the court denying the motion of defendant Vitagliano to strike Exhibit No. 30 and also the testimony with respect to the sale to Mr. Isenhower

of the thirty-six tubes by Rose and the admissions, declarations and statements by Foster wherein Vitagliano is mentioned and the statements of Mr. and Mrs. Humbert purportedly identifying Mr. Vitagliano at Ontario.

27. Defendant Vitagliano duly excepts to the order of the court denying the motion of Vitagliano for a directed verdict of not guilty.

28. Defendants except to the ruling of the court denying the motions in arrest of judgment.

29. Defendants except to the verdict of the jury and to the judgments and sentences pronounced.

MORRIS LAVINE,

Attorney for Appellants. [302]

Thereafter the following stipulation was entered into:

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10445

BENJAMIN ROSE and LOUIS VITAGIALNO,
Appellants,

v.

UNITED STATES OF AMERICA,
Appellee.

STIPULATION

Whereas, the Government's and the defendant's exhibits in evidence in the above entitled action,

which are on file in the office of the Clerk of the United States District Court, Southern District of California, Central Division, are in many instances very difficult, and in some cases impossible, to reproduce either by typewriting or by printing, and

Whereas, the exhibits contain matters, which both parties desire the Court to see in their original form, and

Whereas, some of said exhibits contain notations in the handwriting of various persons which both parties believe should be certified directly to the United States Circuit Court of Appeals for the Ninth Circuit by the District Court for the purposes of this appeal, and

Whereas, there are photographs among said exhibits in [304] evidence, and

Whereas, both the appellants and appellee desire to avoid the expense of copying and re-photographing all of these bodily into the Bill of Exceptions, and the expense of reproducing said photographs in the printing thereof.

Now, Therefore,
It Is Hereby Stipulated and Agreed by and between the appellants, Benjamin Rose and Louis Vitagliano, and the appellee, United States of America, by and through their respective attorneys, subject, nevertheless to the approval of the United States Circuit Court of Appeals for the Ninth Circuit, as follows:

1. That each and all of the hereinafter mentioned and designated exhibits in evidence, which

are herein referred to respectively by the numbers given them by the Clerk of said District Court at the time of the trial herein, may be deemed by reference to be incorporated in the Bill of Exceptions both generally and respectively where and wherever references are made to them by such numbers in the body and context of said Bill of Exceptions to the same effect and purport as though each and all of said exhibits were fully set forth, word for word, figure for figure, and picture for picture in said Bill of Exceptions;

2. That the District Court may, after passing upon appellee's proposed amendments thereto, sign and settle said Bill of Exceptions, and may include therein a copy of this [305] stipulation in lieu of including therein, either in substance or in full, copies of each and all of the hereinafter designated exhibits in evidence, and that thereupon, each of said exhibits shall be deemed to be included in said Bill of Exceptions to the same effect and purport as though each and all of said exhibits were fully set forth therein as aforesaid;

3. That the exhibits to be so included are as follows:

Government's	Exhibit	2
"	"	3
"	"	4
"	"	5
"	"	6
"	"	7
"	"	8
"	"	9

Government's Exhibit 10

" " 11

" " 12

" " 13

" " 14

" " 15

" " 16

" " 17

" " 18

" " 19

[306]

" " 20

" " 21

" " 21-A

" " 22

" " 23

" " 26

" " 27

" " 28

" " 30

" " 32

5. That the United States District Court in and for the Southern District of California may make an order that all of the foregoing designated exhibits be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and for the safe-keeping, transportation, and return thereof, at the cost of the appellants, to be paid to the Clerk of said District Court upon demand:

6. This stipulation in no wise constitutes a waiver of any objections and exceptions to the introduction of any exhibits by the District Court.

Dated: Feb. 2, 1944.

CHARLES H. CARR

United States Attorney

JAMES M. CARTER

Asst. United States Attorney

ERNEST A. TOLIN

Asst. United States Attorney

MORRIS LAVINE

Attorney for Appellants

It Is So Ordered:

ALBERT LEE STEPHENS

Judge of the United States

Circuit Court of Appeals

for the Ninth Circuit [307]

Thereafter the following order was made by the
United States District Court:

In the District Court of the United States in and
for the Southern District of California, Cen-
tral Division.

No. 15881

BENJAMIN ROSE and LOUIS VITAGLIANO,
Defendants and Appellants,

v.

UNITED STATES OF AMERICA,
Plaintiff and Appellee.

STIPULATION

Upon stipulation of the parties, which has been
approved by the United States Circuit Court of

Appeals for the Ninth Circuit, it is ordered that the clerk of the Court transmit to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Bill of Exceptions, the following Government's Exhibits which are hereby incorporated into this Bill of Exceptions by this reference thereto. Said Exhibits are as follows:

Government's Exhibit No. 2

"	"	"	3
"	"	"	4
"	"	"	5
"	"	"	6
"	"	"	7 [308]
"	"	"	8
"	"	"	9
"	"	"	10
"	"	"	11
"	"	"	12
"	"	"	13
"	"	"	14
"	"	"	15
"	"	"	16
"	"	"	17
"	"	"	18
"	"	"	19
"	"	"	20
"	"	"	21
"	"	"	21-A
"	"	"	22
"	"	"	23
"	"	"	26
"	"	"	27

Government's Exhibit No. 28

“ “ “ 30

“ “ “ 32

BEN HARRISON

United States District Judge

[309]

Plaintiff respectively represents that the foregoing Government's Proposed Amendments, including Corrections, Amplifications and Reductions To Bill of Exceptions are and each of them is necessary by way of amendments to Bill of Exceptions proposed by defendants in order that the said Bill of Exceptions be true and accurate.

Dated: February 7, 1944.

CHARLES H. CARR

United States Attorney

JAMES M. CARTER

Assistant United States At-
torney

ERNEST A. TOLIN

Assistant United States At-
torney [310]

The foregoing Bill of Exceptions has been examined and is approved.

Dated: This 27 day of March, 1944.

CHARLES H. CARR,

United States Attorney

By ERNEST A. TOLIN

Assistant United States At-
torney

Attorneys for the Govern-
ment-Plaintiff

MORRIS LAVINE

By MILTON B. [Illegible]

Attorney for Defendant [311]

In the District Court of the United States, South-
ern District of California, Central Division

No. 15811

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BENJAMIN ROSE and LOUIS VITAGLIANO,
Defendants.

ORDER APPROVING BILL OF EXCEPTIONS

An order approving the Bill of Exceptions having been presented to this Court and having been amended to correspond with the facts, is now settled, signed, and made a part of the records within the term and within the time fixed by the United

States Circuit Court of Appeals for the Ninth Circuit.

Dated: March 28 1944.

BEN HARRISON

United States District Judge

[311a]

Received copy of the within Bill of Exceptions this 18th day of December, 1943.

CHARLES H. CARR

United States Attorney

By MARY WENTWORTH

[Endorsed]: Lodged Dec. 18, 1943. Edmund L. Smith, Clerk, by Irwin Hames, Deputy Clerk.

[Endorsed]: Filed March 29, 1944. Edmund L. Smith, Clerk, by Theodore Hocke, Deputy Clerk.

In the District Court of the United States, Southern District of California, Central Division

No. 15811

UNITED STATES OF AMERICA,

Plaintiff and Appellee,

vs.

BENJAMIN ROSE and LOUIS VITAGLIANO,
Defendants and Appellants.

ASSIGNMENTS OF ERROR

The aggrieved by the decision, determination, judgment and proceedings had in the District

Court of the United States, Southern District of California, Central Division, Louis Vitagliano and Benjamin Rose, appellants herein, assign the following errors in the proceedings and trial and judgments against them which they and each of them aver occurred prior to and during the trial of the cause; said errors and each of them are to the great detriment, prejudice and injury of the defendants and appellants and in violation of the rights conferred upon them and each of them, by the Constitution and Statutes of the United States of America. Said errors are as follows:

ASSIGNMENTS OR ERROR

The appellants assign the following errors in the record:

1. The District Court of the United States erred in its decision overruling the defendants' demurrers to the indictments on each of the grounds therein specified.

2. The District Court erred in its decision in denying the motions for a bill of particulars.

3. The District Court erred in its decision that the indictment in Count I thereof states a public offense in violation of the Second War Powers Act.

4. The District Court erred in holding that any crime was created by any executive decree.

5. The District Court erred in its decision in holding that the evidence was sufficient to justify the verdict.

6. The District Court erred in denying the motions of the defendants for a directed verdict.

7. The District Court erred in its decision denying the defendant Benjamin Rose a continuance on account of his physical condition. The District Court denied said Benjamin Rose a fair trial guaranteed by the Fifth Amendment to the Constitution of the United States.

8. The District Court erred in admitting evidence illegally seized and used in the trial in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

9. The District Court erred in failing to arrest judgment on the grounds that evidence illegally seized had been used in evidence in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

10. The District Court erred in denying motions in arrest of judgment on the grounds that the indictment failed to state a public offense.

11. The District Court erred in denying the motions in arrest of judgment on the grounds that the indictment was too vague, indefinite and uncertain to state the nature and cause of accusation and in failing to allege the necessary particulars as to any alleged conspiracy.

12. The District Court erred in holding that the evidence was sufficient to support a charge of conspiracy.

13. The District Court erred in failing to hold that the statute was unconstitutional.

14. The District Court erred in denying the defendants' motion that the indictment was in violation of due process of law guaranteed by the Fifth

Amendment to the Constitution of the United States.

15. The District Court erred in overruling defendants' objection that the indictment was in violation of the Sixth Amendment to the Constitution of the United States.

16. The District Court erred in each and every particular to which exception was taken as set forth in appellants' exceptions and which are herein incorporated by reference; appellants assign as error each and every matter, particular, ruling, and decision upon which an exception is based and which is not hereinbefore specifically mentioned.

Which errors were duly and regularly excepted to and for which errors the appellants and each of them pray for a reversal of the judgments.

MORRIS LAVINE

Attorney for Appellants

Received copy of the within Assignments of Error this 18th day of December 1943.

CHARLES H. CARR

United States Attorney

By MARY WENTWORTH

[Endorsed]: Filed Dec. 18, 1943. Edmund L. Smith, Clerk. By Irwin Hames, Deputy Clerk.

[Endorsed]: Filed Apr. 12, 1944. Paul P. O'Brien, Clerk.

[Endorsed]: No. 10445. United States Circuit Court of Appeals for the Ninth Circuit. Benjamin Rose and Louis Vitagliano, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed May 28, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

At a Stated Term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the fourteenth day of June in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable William Denman, Circuit Judge,
Presiding,

Honorable Clifton Mathews, Circuit Judge,

Honorable Healy, Circuit Judge.

No. 10,445

BENJAMIN ROSE and LOUIS VITAGLIANO,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

ORDER GRANTING APPLICATION OF AP-
PELLANTS FOR ADMISSION TO BAIL
PENDING APPEAL

Upon consideration of the Motion of the appellants, filed May 28, 1943, for admission to bail pending appeal, and good cause therefor appearing, it is Ordered that each of the appellants in the above-entitled cause be, and hereby is admitted to bail in the sum of \$1000.00, bond to be approved by the United States Attorney for the Southern District of California, and by a Judge of this Court.

In the Circuit Court of Appeals of the United
States for the Ninth Circuit

No. 10445

BENJAMIN ROSE and LOUIS VITAGLIANO,
Appellants,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

DESIGNATION OF PARTS OF RECORD TO
BE PRINTED AND POINTS TO BE RE-
LIED ON

Come now the appellants herein and designate the whole of the record to be printed on appeal, as necessary to their appeal.

Appellants further adopt as points to be relied upon each and all of the points set out in the assignment of errors.

MORRIS LAVINE

Attorney for Appellants

[Endorsed]: Filed April 24, 1944. Paul P.
O'Brien, Clerk.

